

***United States Court of Appeals  
for the Second Circuit***



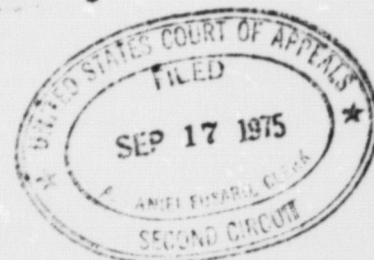
**APPENDIX**





75-7452

IN THE  
**United States Court of Appeals**  
**For The Second Circuit**



**Docket No. 75-7452**

MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED,

*Plaintiff-Appellant,*

*against*

ANASTASIOS ALEXIOU, a/k/a TASSOS ALEXIOU,

*Defendant-Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

**JOINT APPENDIX**

BROWN, WOOD, FULLER, CALDWELL &  
IVEY

*Attorneys for Plaintiff-Appellant*  
One Liberty Plaza  
New York, New York 10006  
(212) 349-7500

LUNNEY & CROCCO

*Attorneys for Defendant-Appellee*  
20 Exchange Place  
New York, New York 10005  
(212) 269-7700

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

75-0828 Knapp, J. Merrill Lynch, Pierce, Fenner & Smith,  
Incorp. -vs- Anastasios, etc.

DATE

PROCEEDINGS

2-20-75	Filed Petition for Removal from Supreme Court, State of New York, County of New York.
2-21-75	Filed notice of petition for removal.
3-4-75	Filed Consent Order that deft's time to answer complaint is ext. from 2-28-75 to 3-21-75. Knapp, J.
2-27-75	Filed affidavit of personal service by G.J. Kapetanios, court baliff, resident of Athens, Greece, served upon A. Alexiou summons & complaint on 1-21-75.
2-20-75	Filed Bond undertaking for removal from Supreme Court, State of N.Y. in the sum of \$500.00 by National Surety Corp.
3-19-75	Filed pltff's affidavit & notice of motion Re: arbitration ret. 4-4-75.
3-19-75	Filed pltff's memorandum of law in support of pltff's motion ret. 4-4-75.
4-1-75	Filed deft's affidavits & notice of motion to dismiss complaint ret. 4-4-75.
4-1-75	Filed deft's brief in support of motion to dismiss complaint ret. 4-4-75.
4-3-75	Filed consent Order that deft's time to answer complaint is ext. from 3-21-75 to 3-28-75. Knapp, J.
4-4-75	Filed stip. & order that pltff's motion to stay action & deft's motion to dismiss are adj. from 4-4-75 to 4-25-75. Knapp, J.
4-23-75	Filed Pltffs Affdvts in opposition to deft's motion to dismiss for lack of jurisdiction over his person.
4-23-75	Filed Pltffs Memorandum in opposition to deft's motion to dismiss for lack of jurisdiction.



# DOCKET ENTRIES

## DATE

## PROCEEDINGS

4-24-75	Filed affidavit of M.J. McAllister in opposition to plttf's Motion to stay action & compel arbitration.
4-24-75	Filed affidavit of F.X. Flannery Re: litigation in Greece.
4-25-75	Filed deft's reply brief in support of his motion to dismiss for lack of personal jurisdiction.
4-25-75	Filed reply affidavit of M.J. McAllister in opposition to deft's motion.
5-13-75	Filed plttf.'s affdvt. in opposition to motion to dismiss.
5-27-75	Filed plttf.'s affdvt. in opposition to motion to dismiss.
5-27-75	Filed Addl. Memorandum of Law in opposition to deft's motion to dismiss this action for lack of jurisdiction.
7-14-75	Filed Memorandum & order #42791: Deft's motion to dismiss for lack of personal jurisdiction is, accordingly, granted & the complaint dismissed without prejudice. Knapp, J. Judg. Ent. Clerk mailed notice. Ent. 7-17-75.
7-24-75	Filed plttf's affidavit & notice of motion to amend judgment ret. 8-7-75.
7-24-75	Filed plttf's memorandum of law in support of motion to amend judgment.
7-29-75	Filed plttf's notice of appeal from judgment dismissing the complaint entered. 7-16-75 Mailed copy to Lunney & Crocco.
7-30-75	Filed copy of plttfs. notice of motion to alter or amend judgment.
7-30-75	Filed MEMO ENDORSED on above copy of motion to amend judgment: Although the issue raised by this motion to amend the judgment was not mentioned in the Court's opinion entered on July 16, 1975, it was carefully considered and found to be untenable. Motion denied. So Ordered. Knapp, J.
8-8-75	Filed Notice that orig. record on appeal has been certified & transmitted to USCA.

ORDER OF ATTACHMENT

At a Special Term, Part II  
of the Supreme Court  
of the State of New  
York, held in and for  
the County of New York,  
at the County Courthouse,  
60 Centre Street, New  
York, New York on the  
24<sup>th</sup> day of December  
1974.

P R E S E N T : **JOSEPH A. SARAFITE**

HON.

Justice

-----x

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,	:	ORDER OF ATTACHMENT
Plaintiff,	:	
- against -	:	INDEX NO.
ANASTASIOS ALEXIOU, a/k/a TASSOS ALEXIOU,	:	1975-5/14
Defendant.	:	

-----x

A motion having been made by the plaintiff for an Order  
of Attachment against the property of the defendant in an  
action in the Supreme Court, New York County,

NOW, on reading and filing the summons and verified com-  
plaint herein, the affidavit of Francis X. Flannery, duly  
sworn to the 24th day of December 1974 and the exhibits an-  
nexed thereto wherein it appears that a cause of action for



ORDER OF ATTACHMENT

a money judgment exists in favor of the plaintiff and against the defendant for the sum stated in the affidavit, namely one million, two hundred forty-seven thousand, six hundred five dollars (\$1,247,605) with interest thereon from the 20th day of December 1974 and that the plaintiff is entitled to recover said sum above all counterclaims known to it;

AND, it being further shown by said affidavit that the plaintiff is entitled to an Order of Attachment against the property of the defendant on the ground that said defendant is not a resident or domiciliary of the State of New York, and the undertaking required by law having been submitted herewith;

NOW, on motion of Brown, Wood, Fuller, Caldwell and Ivey, attorneys for the plaintiff it is,

ORDERED, that the plaintiff's undertaking be and the same hereby is fixed in the sum of \$ 110,000 — , of which amount the sum of \$ 60,000 — thereof is conditioned that the plaintiff will pay to the defendant all legal costs and damages which may be sustained by reason of the attachment if the said defendant recovers judgment or it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property, and the balance thereof in the amount of \$ 50,000 — conditioned that the plaintiff

ORDER OF ATTACHMENT

will pay to the Sheriff all of his allowable fees, and it is further

ORDERED, that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, levy, within his jurisdiction, at any time before final judgment, upon such property in which said defendant, ANASTASIOS ALEXIOU a/k/a TASSOS ALEXIOU, has an interest, including, but not limited to, any beneficial interest which said defendant may have in any corporations, partnerships, sole proprietorships, joint ventures or other businesses, and upon such debts owing to said defendant as will satisfy the plaintiff's demand of \$1,247,605 together with probable interest and costs and the Sheriff's fees and expenses, and that he proceed hereon in the manner required by law.

ENTER

*W. J. ... 10 days*

JOSEPH A. SARAFITE

\_\_\_\_\_  
J.S.C.



AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR ATTACHMENT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x

MERRILL LYNCH, PIERCE, FENNER & SMITH	:	AFFIDAVIT IN SUPPORT
INCORPORATED,	:	OF APPLICATION FOR
Plaintiff,	:	ATTACHMENT
- against -	:	INDEX NO.
ANASTASIOS ALEXIOU, a/k/a	:	
TASSOS ALEXIOU,	:	
Defendant.	:	

-----x

STATE OF NEW YORK    )  
                          :    ss:  
COUNTY OF NEW YORK    )

FRANCIS X. FLANNERY being duly sworn, deposes and says:

1. I am an attorney in the Law Department of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") the plaintiff in this action and I make this affidavit in support of plaintiff's application pursuant to CPLR § 6201 et seq. for the issuance of an Order of Attachment against the property of the defendant ANASTASIOS ALEXIOU, a/k/a TASSOS ALEXIOU. This affidavit is based, except where otherwise indicated herein, upon information and belief. The sources of the information upon which I base this affidavit are the records of the plaintiff annexed hereto, which are maintained in the ordinary course of plaintiff's business.

2. For the reasons stated below, and in the verified

AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR ATTACHMENT

complaint annexed hereto as Exhibit A, the plaintiff is about to commence an action against the defendant, a Greek national residing in Greece, to recover the sum of \$1,247,605, with interest from December 20, 1975, and the costs and disbursements of this action, which sum is the unsecured debit balance in defendant's commodities account number 110-21085 with Merrill Lynch.

3. On or about October 18, 1974 said defendant opened said account number 110-21085 with Merrill Lynch for the purpose of trading in commodities on exchanges within the State of New York, elsewhere in the United States and throughout the world. On that occasion, he gave his address to the plaintiff as 34 Demokritou Street, Athens TT 136, Greece and he further stated that he was a citizen of Greece. A copy of the New Account Information form of Merrill Lynch embodying this information is annexed hereto as Exhibit B.

4. The plaintiff purchased and sold various commodity futures contracts at the defendant's order and for the defendant's account and risk during the months of October, November and December, 1974. Copies of the monthly statements of defendant's account for the months of October and November 1974, together with Merrill Lynch's Commodity Account Profile for defendant's account for the month of December 1974, showing all transactions in said account during said months, are annexed hereto as Exhibit C.



AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR ATTACHMENT

5. As a result of said transactions, the defendant owes the plaintiff the sum of \$1,247,605, over and above all counterclaims known to the plaintiff, no part of which has been paid despite plaintiff's demand therefor. A copy of a statement derived from the above-mentioned monthly statements and Commodity Account Profile by the plaintiff's Commodity Account Department showing an unsecured debit balance in defendant's account of \$1,247,605.18 is annexed hereto as Exhibit D.

6. No previous application for a writ of attachment or any other provisional remedy has been made in this action.

*Francis X. Flannery*  
Francis X. Flannery

Sworn to before me this  
24th day of December 1974

*Thomas J. Mulaney*  
Notary Public

THOMAS J. MULANEY  
Notary Public, State of New York  
No. 30-8252355  
Qualified in New York County  
Cert. Filed in New York County  
Commission Expires March 30, 1978

THOMAS J. MULANEY  
Notary Public, State of New York  
No. 30-8252355  
Qualified in New York County  
Cert. Filed in New York County  
Commission Expires March 30, 1978

SUMMONS

C 199—Summons without Notice, Supreme Court. 9-71  
Personal Service.

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

Supreme Court of the State of New York  
County of NEW YORK

MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED,

Plaintiff

against

ANASTASIOS ALEXIOU, aka  
TASSOS ALEXIOU,

Defendant

Index No.

Plaintiff designates NEW YORK

County as the place of trial

The basis of the venue is  
residence of the plaintiff

Summons

Plaintiff resides at

One Liberty Plaza  
New York, New York 10006

County of

To the above named Defendant

**You are hereby summoned** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, December 24, 1974

Defendant's address:

34 Demokritou Street  
Athens TT 136 Greece

Brown, Wood, Fuller, Caldwell  
& Ivey  
Attorney(s) for Plaintiff

Post Office Address

One Liberty Plaza  
New York, New York 10006  
(212) 349-7500



VERIFIED COMPLAINT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
MERRILL LYNCH, PIERCE, FENNER & SMITH :  
INCORPORATED, :  
Plaintiff, : VERIFIED COMPLAINT  
against - : INDEX NO.  
ANASTASIOS ALEXIOU, a/k/a :  
TASSOS ALEXIOU, :  
Defendant. :

-----X  
The plaintiff, MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED ("Merrill Lynch") by its attorneys Brown, Wood,  
Fuller, Caldwell & Ivey, complaining of the defendant,  
alleges as follows:

1. The plaintiff is a Delaware corporation, licensed to do business and doing business in the State of New York as a broker-dealer in securities and commodities, with an office and principal place of business at One Liberty Plaza, New York, New York 10006.
2. Upon information and belief the defendant is a Greek national, residing at 34 Demokritou Street, Athens TT 136 Greece.
3. On or about October 18th, 1974, the defendant opened an account No. 110-21085 with Merrill Lynch for the purpose of purchasing and selling commodities futures contracts through Merrill Lynch within the State of New York and at other locations in the United States and throughout the world.

VERIFIED COMPLAINT

4. On various occasions in the months of October, November and December 1974, the defendant ordered the plaintiff to purchase and sell various commodity futures contracts as his agent and for his account and risk, which orders were executed by Merrill Lynch. A list of said transactions is contained in the monthly statements of defendant's account No. 110-21085 for the months of October and November 1974 and in Merrill Lynch's Commodity Account Profile for said account for the month of December 1974, which documents are annexed hereto as Exhibit A and made a part hereof.

5. As a result of said transactions there is due and owing by the defendant to the plaintiff as of December 20, 1974, the sum of \$1,247,605.18, no part of which has been paid despite plaintiff's demand therefor.

WHEREFORE, the plaintiff demands judgment against the defendant in the amount of \$1,247,605.18 together with interest from December 20, 1974 and the costs and disbursements of this action.

DATED: New York, New York  
December 24, 1974

BROWN, WOOD, FULLER, CALDWELL &  
IVEY  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, New York 10006  
(212) 349-7500

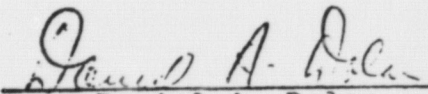


VERIFIED COMPLAINT

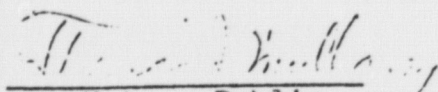
STATE OF NEW YORK )  
                              : ss:  
COUNTY OF NEW YORK )

DANIEL A. DOLAN, being duly sworn, deposes and says:

Deponent is a Vice President of Merrill Lynch, Pierce, Fenner & Smith Incorporated, the plaintiff in the within action, that he has read the foregoing complaint and knows the contents thereof, that the same are true to deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true. The grounds for deponent's belief are the business records of the plaintiff annexed hereto as exhibits.

  
Daniel A. Dolan

Sworn to before me  
this 24th day of  
December 1974

  
Notary Public

THOMAS J. MULANEY  
Notary Public, State of New York  
No. 30-0052355  
Qualified in Nassau County  
Cert. Filed in New York County  
Commission Expires March 30, 1976

AFFIDAVIT OF PERSONAL SERVICE  
REPUBLIC OF GREECE )  
PROVINCE OF ATTICA )  
CITY OF ATHENS ) SS:  
EMBASSY OF THE )  
UNITED STATES OF AMERICA )

STATE OF NEW YORK  
COUNTY OF NEW YORK

ss. AFFIDAVIT OF PERSONAL SERVICE

Merrill Lynch, Pierce, Fenner and Smith Incorporated

Plaintiff

against

Anastassios Alexiou, a/k/a,  
Tassos Alexiou,

Defendant

I, George J. Kapetanios, Court Bailiff, a resident of 8, Nikitara Str. Athens Greece being duly sworn, depose and say that I am not a party to the action and I am over 18 years of age.

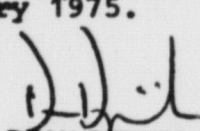
That on the 21st day of January 1975 I personally served upon Anastassios Alexiou a/k/a Tassos Alexiou, a resident of 34 Dimokritou Str. Athens, Greece by delivering to him personally a true copy of the summons and complaint thereof filed before the Supreme Court of the State of New York County of New York.

I know the person so served to be the person mentioned and described in said papers as the defendant therein.

My means of knowledge as to the identity of the person served was as follows:

In my question whether he was Anastassios Alexiou a/k/a Tassos Alexiou he gave an affirmative answer.

Sworn before me, this...<sup>4th</sup> day of <sup>FEBRUARY</sup> ~~January~~ 1975.

  
DEAN DZIKIS  
AMERICAN CONSUL



NOTICE OF PETITION  
FOR REMOVAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,	:	New York State
	:	Supreme Court
	:	Index No. 19755/74
Plaintiff,	:	
-against-	:	75 Civ. 25(W)
ANASTASIOS ALEXIOU, a/k/a TASSOS ALEXIOU,	:	NOTICE OF PETITION
	:	<u>FOR REMOVAL</u>
Defendant.	:	

-----x

TAKE NOTICE, that the undersigned have filed with the Clerk of the United States District Court for the Southern District of New York on February 19<sup>th</sup>, 1975, a petition to remove the above action as to the defendant from the Supreme Court of the State of New York, County of New York to the United States District Court for the Southern District of New York, said petition having been filed on behalf of said defendant in the above action together with a bond in the amount of \$500 as good and sufficient security as required by law.

NOTICE OF PETITION  
FOR REMOVAL

Dated: New York, New York  
February 19, 1975.  
20

LUNNEY & CROCCO  
Attorneys for Defendant  
20 Exchange Place  
New York, N. Y. 10005  
(212) 483-1424

TO:

BROWN, WOOD CALDWELL & IVEY  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, N. Y. 10006

Clerk of the Court,  
New York State Supreme Court,  
New York County  
60 Centre Street  
New York, N. Y. 10007



PETITION FOR REMOVAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,	:	New York State
	:	Supreme Court
	:	Index No. 19755/74
Plaintiff,	:	
-against-	:	75 Civ.
	:	
ANASTASIOS ALEXIOU, a/k/a TASSOS ALEXIOU,	:	<u>PETITION FOR REMOVAL</u>
	:	
Defendant.	:	
	:	

-----x

Petitioner, Anastasios Alexiou, by his attorneys,  
Lunney & Crocco, respectfully petitions the Court as  
follows:

1. The above-entitled action was commenced  
as to the petitioner in the Supreme Court, State of New  
York, County of New York on or about January 21, 1975  
and is now pending therein.
2. This action purports to be a civil action  
for money damages by plaintiff against petitioner.
3. Copies of all pleadings, process and orders  
filed in this action are attached hereto and filed

PETITION FOR REMOVAL

herewith. The summons and complaint was served on petitioner on or about January 21, 1975. Thirty days have not yet expired since this action became removable to this Court.

4. The amount in controversy in this action, exclusive of interest and costs, exceeds \$10,000. Petitioner is a resident and citizen of Greece. Merrill Lynch is a Delaware corporation, licensed to do business in New York State and with an office and principal place of business in the County and City of New York. (¶ 1, Verified Complaint) There is, therefore, complete diversity between the parties.

5. Plaintiff's complaint involves parties and issues as to which this Court has original jurisdiction pursuant to Title 28 U.S.C., §§ 1331(a) and 1332 and this action as to petitioner is removable pursuant to Title 28 U.S.C., § 1441.

6. Petitioner files herewith a bond in the amount of \$500 as good and sufficient security, conditioned as required by law for the payment of costs and disbursements incurred by reason of these proceedings



PETITION FOR REMOVAL

if the same should be determined not to be removable or was improperly removed.

WHEREFORE, petitioner requests that the above-entitled action be removed from the Supreme Court, State of New York, County of New York to the United States District Court for the Southern District of New York.

LUNNEY & CROCCO

By MICHAEL J. McALLISTER  
A Member of the Firm  
Attorneys for Petitioner  
Anastasios Alexiou  
20 Exchange Place  
New York, N. Y. 10005  
(212) 483-1424

PETITION FOR REMOVAL

STATE OF NEW YORK  
COUNTY OF NEW YORK:

MICHAEL J. McALLISTER, being duly sworn, says:

That he is the attorney for Anastasios Alexiou, petitioner herein, that he has read the foregoing petition and knows the contents thereof, that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Deponent further says that the reason why this verification is not made by the petitioner and is made by him is that the petitioner is a Greek resident, that the sources of deponent's information and the grounds of his belief as to all matters not therein stated upon his knowledge are as follows: statements and reports of petitioner and documents and correspondence in the possession of deponent.

MICHAEL J. McALLISTER

MICHAEL J. McALLISTER

Sworn to before me  
February 19, 1975.

LEE M. FULLER, JR.

Notary Public

LEE M. FULLER, JR.  
Notary Public, State of New York  
No. 60-6429360  
Qualified in Westchester County  
Certificate filed in New York County  
Commission Expires March 30, 1976



NOTICE OF MOTION TO DISMISS THE COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,	:	
	:	
Plaintiff,	:	75 Civ. 838 (WK)
-against-	:	
	:	
ANASTASIOS ALEXIOU, a/k/a TASSOS ALEXIOU,	:	NOTICE OF MOTION TO DISMISS THE COMPLAINT
	:	
Defendant.	:	

----- x

TAKE NOTICE that, upon the annexed affidavits of Anastasios Alexiou, sworn to March 18, 1975 and Michael J. McAllister, sworn to March 26, 1975, the summons and complaint and all prior proceedings herein, and upon the memorandum of law submitted herewith, the undersigned will move this Court before the Honorable Whitman Knapp in Room 1105, United States Courthouse, Foley Square, New York, New York on the 4th day of April, 1975 at 2:00 p.m., or as soon thereafter as counsel can be heard, for an order, pursuant to F.R.Civ.P. 12(b) and New York CPLR 3211(a)(8), dismissing the complaint on the ground that this Court lacks jurisdiction over the person of the defendant and for such other and further relief as

NOTICE OF MOTION TO DISMISS THE COMPLAINT

the Court may deem just and proper.

Dated: New York, New York  
March 26, 1975

LUNNEY & CROCCO

By s/ \_\_\_\_\_  
A Member of the Firm  
20 Exchange Place  
New York, New York 10005  
(212) 269-7700

TO:

BROWN, WOOD, FULLER, CALDWELL & IVEY  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, New York 10006



AFFIDAVIT OF A. ALEXIOU IN SUPPORT OF MOTION TO DISMISS  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

MERRILL LYNCH, PIERCE, FENNER AND  
SMITH INCORPORATED,

PLAINTIFF,

- AGAINST -

ANASTASIOS ALEXIOU, A/K/A TASSOS  
ALEXIOU,

DEFENDANT,

75 CIV. 8<sup>3</sup>28 (WK)

AFFIDAVIT

---

REPUBLIC OF GREECE

CITY OF ATHENS

EMBASSY OF THE UNITED STATES OF AMERICA:

ANASTASIOS ALEXIOU, being duly sworn says:

1. I am the Defendant in this action and reside at 34 Demokritou Street, Athens, TT136, Greece. This affidavit is submitted in support of my motion to dismiss the complaint on the ground that this Court lacks jurisdiction over my person.

2. In this action, Plaintiff seeks damages of Dollars 1,200,000.- arising out of an alleged debit balance in my Commodities Account which I opened in October, 1974 and maintained until December, 1974 at the London Office of Merrill Lynch, Pierce, Fenner and Smith, Ltd. ("Merrill Lynch Ltd."), a securities and commodities broker located in London, England.

3. I do not now maintain a residence or domicile in the State of New York nor did I maintain a residence or domicile in that State during the time in question. At no time did I transact any business within the State of New York in connection with my Commodities Account with either Merrill Lynch Ltd. or Plaintiff. As to each and

AFFIDAVIT OF A. ALEXIOU IN SUPPORT OF MOTION TO DISMISS

every contact that I had with either Merrill Lynch Ltd. or Plaintiff, I was physically situated either in London, England or elsewhere in Europe. At no time was I physically present in the State of New York when I transacted business with Merrill Lynch Ltd. or Plaintiff.

Wherefore, it is respectfully requested that my motion to dismiss the complaint for lack of personal jurisdiction be granted in all respects.

PUBLIC OF GREECE )  
PROVINCE OF ATTICA )  
CITY OF ATHENS )  
EMBASSY OF THE )  
UNITED STATES OF AMERICA )

SS:

*Anastasios Alexiou*

Anastasios Alexiou

Subscribed and sworn to before me,  
the undersigned consular officer  
of the United States of America at  
Athens, Greece, duly commissioned  
and qualified, this 18th day of,  
March 1975

*Dean Dzikas*  
DEAN DZIKES  
AMERICAN CONSUL



AFFIDAVIT OF M. J. McALLISTER IN SUPPORT OF MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MERRILL LYNCH, PIERCE, FENNER &  
SMITH INCORPORATED,

Plaintiff,

-against-

ANASTASIOS ALEXIOU, a/k/a  
TASSOS ALEXIOU,

Defendant.

75 Civ. 828 (WK)

AFFIDAVIT

STATE OF NEW YORK  
COUNTY OF NEW YORK:

Michael J. McAllister, being duly sworn, says:

1. I am a member of Lunney & Crocco, attorneys for defendant, and, being familiar with the facts herein, submit this affidavit in support of defendant's motion to dismiss the complaint for lack of personal jurisdiction under F.R.Civ.P.12(b) and New York CPLR 3211(a)(8).

2. Attached hereto as Exhibit A is a copy of the summons and complaint served upon defendant Alexiou in Athens, Greece on January 21, 1975.

3. On or about December 24, 1975 plaintiff obtained an order of attachment while this action was still pending in New York State Supreme Court. No levy has been made upon

AFFIDAVIT OF M. J. MCALLISTER IN SUPPORT OF MOTION TO DISMISS

any assets of Mr. Alexiou within the State of New York, if,  
in fact, any assets of his are located in the State.

s/ Michael J. McAllister  
\_\_\_\_\_  
Michael J. McAllister

Sworn to before me  
March 26, 1975

s/ Lee M. Fuller, Jr.  
\_\_\_\_\_  
Notary Public



AFFIDAVIT OF J. VILLALBA  
IN OPPOSITION TO MOTION TO DISMISS

Great Britain and Northern Ireland )  
London, England ) SS:  
Embassy of the United States of America )

Jeronimo Villalba, being duly sworn, deposes and says:

1. I am the Manager of Merrill Lynch, Pierce, Fenner & Smith Ltd. (Merrill Lynch Limited) an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch) at London, England. As such, I am fully familiar with the commodities account maintained at Merrill Lynch through the facilities of this office by Mr. Anastasios Alexiou, A K A Tassos Alexiou, during October, November and December of 1974.
2. Merrill Lynch Limited merely services the accounts of customers of Merrill Lynch, e.g. it transmits orders, information and funds between Merrill Lynch and its overseas customers. The accounts themselves, including the account of Mr. Alexiou, are actually maintained by Merrill Lynch, a Delaware Corporation with its Home Office in New York. This fact was evident to Mr. Alexiou and understood by him, as is shown by the following documents:
  - a) A letter of Mr. Alexiou addressed to Merrill Lynch, One Liberty Plaza, New York, New York, authorizing Merrill Lynch to accept delivery of certain sugar contracts from another broker.
  - b) A form signed by Mr. Alexiou authorizing Merrill Lynch to transfer funds between his accounts.
  - c) A Commodity Account Agreement signed by Mr. Alexiou showing that his account was with Merrill Lynch and would be governed by the laws of the State of New York.

These papers are annexed hereto as Exhibit A.

AFFIDAVIT OF J. VILLALBA  
IN OPPOSITION TO MOTION TO DISMISS

3. Mr. Alexiou gave orders for the purchase of a substantial number of contracts of sugar 11, a contract which is traded only on the Coffee and Sugar Exchange in New York, New York. A specimen copy of a New York Sugar 11 Contract is annexed hereto as Exhibit B. The monthly statements of Mr. Alexiou's account showing this activity in New York Sugar 11 are annexed hereto as Exhibit C. Briefly stated, Mr. Alexiou purchased a total of 60 contracts of New York Sugar 11 during October, 1974, purchased 40 additional contracts in New York Sugar 11 on November 8, 1974 and had an additional 100 contracts of New York Sugar 11 transferred into his Merrill Lynch account from another broker on November 7, 1974, making a total position of 200 contracts of New York Sugar 11 in Mr. Alexiou's account. Mr. Alexiou was specific in ordering New York Sugar, and specifically knew that this contract could only be purchased or sold in New York.
  
4. On one occasion, Mr. Alexiou was personally involved in transmitting an order for the sale of Sugar contracts to New York. On December 3, 1974 Mr. Alexiou came to the London office and a telephone call was made to the Merrill Lynch sugar specialist in New York, Orlando Contrucci. I was on the line with Mr. Alexiou in London as was Mr. Marc Sibony, an Account Executive in this office. During the course of this conversation, market information was given by Mr. Contrucci to Mr. Alexiou, Mr. Alexiou gave an order for the sale of 25 contracts of May 1976 Sugar 11, that order was executed in the New York market and news of the execution was immediately given to Mr. Alexiou.

s/ Jeronimo Villalba  
JERONIMO VILLALBA

SWORN TO ME THIS

Fourteenth Day of April, 1975

s/ John J. Degan, Jr.  
\_\_\_\_\_  
JOHN J. DEGAN, Jr.  
Consul of the United States  
of America at London, England



EXHIBIT A TO AFFIDAVIT OF J. VILLALBA

34 Demokritou Street  
Athens TT136 Greece

November 7, 1974

Merrill Lynch, Pierce, Fenner & Smith Inc.  
One Liberty Plaza  
165 Broadway  
New York NY 10006

Dear Sirs,

Please accept this letter as my authorization to transfer my account from SNW to Merrill Lynch under the account number 110-21085. My account is at present long 100 lots of October 75 New York Sugar 11.

I also authorize you to debit my account with the sum of U.S. \$1 million plus commissions on the purchase and sale of these hundred contracts that Merrill Lynch charges SNW the total sum to be paid to SNW.

In the process you are transferring the hundred contracts at the equivalent of my purchase price with SNW and I am also agreeing to being charged a round turn commission by Merrill Lynch on these hundred contracts of October 75 New York Sugar 11.

With many thanks and best personal regards.

Sincerely,


  
TASSOS ALEXIOU

EXHIBIT A TO AFFIDAVIT OF J. VILLALBA

AUTHORIZATION TO TRANSFER  
CUSTOMER'S SEGREGATED FUNDS

7 Nov, 1974

TO: MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Until further notice in writing, you are hereby authorized and directed to transfer from my/our Regulated Commodity Account to my/our Securities Account or Unregulated Commodity Account such amount of excess funds as in your judgment may be necessary at any time to avoid calls for margin for such Securities Account or Unregulated Commodity Account, and/or to reduce the debit balance in such Securities Account or Unregulated Commodity Account. By "Regulated Commodity" is meant any commodity now or hereafter covered by the Commodity Exchange Act. This authorization shall also inure to the benefit of your successors, by merger, consolidation or otherwise, and assigns.

This authorization is conditioned upon your prompt confirmation in writing of any and all transfers of funds made pursuant hereto.

Ross C. C. C.



EXHIBIT A TO AFFIDAVIT OF J. VILLALBA

CODE 91R 6-67

COMMODITY ACCOUNT AGREEMENT

Merrill Lynch, Pierce, Fenner & Smith Incorporated

In consideration of your acting as broker for the undersigned, I hereby consent and agree that:

Any and all transactions shall be subject to the constitution, rules, regulations, customs and usages of the exchange or market (and its clearing house, if any), where executed.

Any and all commodities or contracts relating thereto, now or hereafter held or carried by you for me, (either individually or jointly with others) are to be held by you as security for the payment of any liability of mine to you.

You shall have the right, whenever in your discretion you consider it necessary for your protection, or in the event that a petition in bankruptcy, or for the appointment of a receiver, is filed by or against me, or an attachment is levied against my account(s) with you, or in the event of my death, to sell any or all commodities in my account(s), (either individually or jointly with others) to buy any or all commodities which may be short in such account(s) and to close any or all outstanding contracts, all without demand for margin or additional margin, notice of sale or purchase, or other notice or advertisement, and any such sales or purchases may be made at my discretion on any exchange or other market where such business is then usually transacted, and on any such sale you may be the purchaser for your own account, it being understood that a prior demand, or call, or prior notice of the time and place of such sale or purchase shall not be considered a waiver of your right to sell or to buy without demand or notice as herein provided, and it being further understood that I shall at all times be liable for the payment of any debt balance owing in my account(s) with you upon demand, and that I shall be liable for any deficiency remaining in any such account(s) in the event of the liquidation thereof in whole or in part by you or by me.

I represent that I am more than twenty-one years of age.

All communications, whether by mail, telegraph, telephone, messenger, or otherwise, sent to me at my address as given to you from time to time shall constitute personal delivery to me.

It is agreed that any controversy between us arising out of your business or this agreement, shall be submitted to arbitration conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange, except however if the controversy involves any Security or Commodity transaction or contract relating thereto executed on an exchange located outside of the United States then such controversy, at the election of either of us, shall be submitted to arbitration conducted under the constitution and rules of such exchange (and if neither of us so elects, arbitration shall be conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange). Arbitration must be commenced within one year after the cause of action accrued by service upon the other of a written demand for arbitration or a written notice of intention to arbitrate, naming therein the arbitration tribunal.

(OVER)

EXHIBIT A TO AFFIDAVIT OF J. VILLALBA

This agreement and its enforcement shall be governed by the laws of the State of New York.  
This agreement shall also inure to the benefit of your successors, by merger, consolidation or otherwise, and you may transfer my account to any such successors or assigns.  
This agreement shall continue until signed notice of revocation is received by me, and in case of such revocation it shall continue effective as to transactions entered into prior thereto.

Date 7 Nov 1974 (Signature) [Signature]

COMMODITY ACCOUNT AGREEMENT

TASSOS ALEXIOU  
NAME

110-21085

ACCOUNT NO.

UNREGULATED  
REGULATED

(OVER)



EXHIBIT B TO AFFIDAVIT OF J. VILLALBA

CONTRACT NO. 11

New York..... 19....

..... (have) (sold)  
..... (has) this day (bought)

(deliver to) M.....  
and agreed to (receive from) M.....  
50 tons of 2,240 Standard American avoirdupois pounds of sound Raw Centrifugal  
Cane Sugar in bulk at ..... cents net cash U. S. currency per pound based on  
96 degrees average polarization with adjustments for other grades in accordance with  
Section 110b (3).

The sugar delivered under this contract shall have been manufactured within  
the eighteen calendar months preceding the delivery month specified below. Deliverer  
shall be responsible for all expenses pertaining to delivery and loading of sugar into  
the vessel, including freight taxes and other taxes of the country of origin of any nature.  
Normal pilotage, wharfage charges, customs fees and similar charges pertaining to  
the entry or exit of the vessel at loading port are for the account of the Receiver.  
Sugar delivered shall be free and clear of all liens and claims of any kind, which  
shall be warranted by the Deliverer to the Receiver in making the delivery. The Sugar  
delivered shall be freely available for export.

Delivery during..... to be made FOB and stowed  
(trading month)  
aboard Receiver's nominated vessel in accordance with Sugar Trade Rule 11.05.

Sugar deliverable to be as provided in Section 110b(2). Weight and polarization  
to be determined as provided in Sugar Trade Rule 11.09 and payment to be made  
in accordance with Sugar Trade Rule 11.10.

Either party may call for margin as the variations of the market for like deliveries  
may warrant, which margin shall be kept good.

This contract is made in view of, and in all respects subject to, the By-Laws,  
Rules and Regulations of the New York Coffee and Sugar Exchange, Inc.

.....  
(Brokers)

(Across the face is the following)

For and in consideration of one dollar to.....  
in hand paid, receipt whereof is hereby acknowledged, .....  
accept this contract with all its obligations and conditions.

UNREGULATED


**Merrill Lynch  
Pierce  
Fenner & Smith Inc.**

## STATEMENT OF COMMODITY ACCOUNT

1	10/25/74	110-21085
PAGE	DATE	ACCOUNT NO.

DATE	BUY/SELL	DESCRIPTION	MT. EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	ORDER NUMBER
9 27 74		U.S. FDS OPENING BALANCE				.00		
10 18 74	20	OCT 75 SUGAR 11	COF	3375				
10 21 74	1	OCT 75 SUGAR 11	COF	3449				
10 22 74	2	OCT 75 SUGAR 11	COF	3549				
10 22 74	4	OCT 75 SUGAR 11	COF	3549				
10 22 74	1	OCT 75 SUGAR 11	COF	3549				
10 22 74	5	OCT 75 SUGAR 11	COF	3549				
10 22 74	12	OCT 75 SUGAR 11	COF	3549				
10 22 74	2	OCT 75 SUGAR 11	COF	3549				
10 23 74	5	OCT 75 SUGAR 11	COF	3549				
		AS OF 10/22/74						
10 23 74	3	OCT 75 SUGAR 11	COF	3538		280000.00		115
10 24 74		CK						
10 25 74	5	OCT 75 SUGAR 11	COF	3646				
10 25 74		U.S. FDS CLOSING BALANCE				280000.00		

## ACCOUNT OPEN POSITIONS

DATE	BUY/SELL	DESCRIPTION	MT. EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT
10 18 74	20	OCT 75 SUGAR 11	COF	3375	3646		60704.00
10 21 74	1	OCT 75 SUGAR 11	COF	3449	3646		2206.40
10 22 74	2	OCT 75 SUGAR 11	COF	3549	3646		2172.80
10 22 74	4	OCT 75 SUGAR 11	COF	3549	3646		4345.60
10 22 74	12	OCT 75 SUGAR 11	COF	3549	3646		13036.80
10 22 74	5	OCT 75 SUGAR 11	COF	3549	3646		5432.00

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UNREGULATED


**Merrill Lynch  
Pierce  
Fenner & Smith Inc.**

2	10/25/74	110-21085
PAGE	DATE	ACCOUNT NO.





**Merrill Lynch  
Pierce  
Fenner & Smith Inc.**

**STATEMENT OF COMMODITY ACCOUNT**

DATE			BOUGHT	SOLD	DESCRIPTION	MKT EXPLAN TION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BALANCE FORWARD
MO	DAY	YR									
10	22	74	1		OCT 75 SUGAR 11	COF	3549	3646		1086.40	
10	22	74	2		OCT 75 SUGAR 11	COF	3549	3646		2172.80	
10	22	74	5		OCT 75 SUGAR 11	COF	3549	3646		5432.00	
10	23	74	3		OCT 75 SUGAR 11	COF	3535	3646		3729.60	
10	25	74	5		OCT 75 SUGAR 11	COF	3646	3646	.00		
			60		UNREALIZED PROFIT					100318.40	
---											
---											
EVALUATED AS OF 10/25/74											
ACCOUNT BALANCE											
TOTAL UNREALIZED PROFIT											
DEFICIT											
									280000.00		
									179681.60	100318.40	

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EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

UNREGULATED



**Merrill Lynch  
Pierce  
Fenner & Smith Inc.**

**STATEMENT OF COMMODITY ACCOUNT**

PAGE 1 DATE 10/25/74 ACCOUNT NO. 110-21107


DATE MO DAY YR BOUGHT SOLD DESCRIPTION MKT EXPLAN TION TRADE PRICE MARKET PRICE DEBIT CREDIT BALANCE FORWARD

4162

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

MR TASSOS ALEXIOU  
34 DEMOKRITOU STREET  
ATHENS 11 136  
GREECE 00000

UNREGULATED

 **Merrill Lynch  
Pierce  
Fenner & Smith Inc.**

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Please advise your account executive immediately of any discrepancy. When making inquiries, please mention your account number and address all correspondence to the office issuing your account. Please keep this statement for your records. For description of symbols and other matters, see reverse side.


STATEMENT OF COMMODITY ACCOUNT

DATE			BOUGHT	SOLD	DESCRIPTION	MKT	EXPLAN- ATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
10	25	74			U.S. FDS OPENING BALANCE					280000.00		
10	29	74			DEPOSIT AS OF 10 23							
10	30	74			TER TO 110 09914 STK					284320.00		
					9L					38447.68		
11	01	74			TRF TO 110 09914							
					STK 9C						280754.44	339
11	06	74			DEPOSIT						9970.00	
11	06	74			TRF FM 110 09914 STK							
					9					1005803.20		208
11	07	74			N.Y. CHECK						310679.64	339
11	07	74			DEPOSIT					594175.49		
11	07	74			TRF TO 110 09914 STK							
					9C							
11	07	74	35		OCT 75 SUGAR 11	COF		2333				
					AS OF 11/07/74							
11	07	74	15		OCT 75 SUGAR 11	COF		2345				
					AS OF 11/07/74							
11	07	74	10		OCT 75 SUGAR 11	COF		2290				
					AS OF 11/07/74							
11	07	74	2		OCT 75 SUGAR 11	COF		2330				
					AS OF 11/07/74							
11	07	74	4		OCT 75 SUGAR 11	COF		2300				
					AS OF 11/07/74							
11	08	74			TRF TO 11009914 STK					594175.49		
11	08	74	34		OCT 75 SUGAR 11	COF		2330				
					AS OF 11/07/74							

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MR TASSOS ALEXIOU

UNREGULATED

 **Merrill Lynch  
Pierce**

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MR TASSOS ALEXIOU

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Merrill Lynch  
Pierce  
Fenner & Smith Inc.

## STATEMENT OF COMMODITY ACCOUNT

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DATE			BOUGHT	SOLD	DESCRIPTION	MKT	EXPLAN- ATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
11	08	74	15		OCT 75 SUGAR 11	COF		4940				
11	08	74	1		OCT 75 SUGAR 11	COF		4915				
11	08	74	9		OCT 75 SUGAR 11	COF		4860				
11	08	74	1		OCT 75 SUGAR 11	COF		4910				
11	08	74	1		OCT 75 SUGAR 11	COF		4860				
11	08	74	1		OCT 75 SUGAR 11	COF		4945				
11	08	74	9		OCT 75 SUGAR 11	COF		4930				
11	08	74	3		OCT 75 SUGAR 11	COF		4935				
11	08	74	1		OCT 75 SUGAR 11	COF		4935				
11	11	74			TFR TO 110 09914 STK					1641700.46		
					9C							
11	12	74		3	OCT 75 SUGAR 11	COF		5100				
11	12	74		17	OCT 75 SUGAR 11	COF		5100				
11	12	74	20		OCT 75 SUGAR 11	COF		5050			9960.00	
11	12	74			20 OCT 75 SUGAR 11		P88			615317.71		
11	12	74			TFR TOU10 09914 STK							
11	14	74			9C					147788.17		
11	14	74			TFR TOU10 09914 STK							
					9C							
11	14	74		24	MAR 75 SUGAR 11	COF		5675				
11	14	74	6		MAR 75 SUGAR 11	COF		5675				
11	14	74	6		OCT 75 SUGAR 11	COF		4700				
11	14	74	4		OCT 75 SUGAR 11	COF		4695				
11	14	74	1		OCT 75 SUGAR 11	COF		4700				
11	14	74	1		OCT 75 SUGAR 11	COF		4700				
11	14	74	1		OCT 75 SUGAR 11	COF		4700				
11	14	74	2		OCT 75 SUGAR 11	COF		4700				
11	14	74	5		OCT 75 SUGAR 11	COF		4680				

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

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MR TASSOS ALEXIOU

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Merrill Lynch  
Pierce  
Fenner & Smith Inc.

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MR TASSOS ALEXIOU

UNREGULATED


**Merrill Lynch  
Pierce  
& Fenner & Smith Inc.**

## STATEMENT OF COMMODITY ACCOUNT

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DATE			BOUGHT	SOLD	DESCRIPTION	MT	EXPLAN- ATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
11	14	74		10	OCT 75 SUGAR 11	COF		4690			422524.10	
11	14	74			30 OCT 75 SUGAR 11	COF	P88	6120				
11	18	74	6		MAR 75 SUGAR 11	COF		6120				
11	18	74	18		MAR 75 SUGAR 11	COF		6120		151342.80		
11	18	74	6		MAR 75 SUGAR 11	COF	P88					
11	18	74			30 MAR 75 SUGAR 11	COF		5940				
11	18	74	5		MAY 75 SUGAR 11	COF		5935				
11	18	74	5		MAY 75 SUGAR 11	COF		5944				
11	18	74	23		MAY 75 SUGAR 11	COF		5920				
11	18	74	3		MAY 75 SUGAR 11	COF		5920				
11	18	74	14		MAY 75 SUGAR 11	COF		4950				
11	18	74		2	OCT 75 SUGAR 11	COF		4930				
11	18	74		4	OCT 75 SUGAR 11	COF		4950				
11	18	74		1	OCT 75 SUGAR 11	COF		4950				
11	18	74		1	OCT 75 SUGAR 11	COF		4950				
11	18	74		5	OCT 75 SUGAR 11	COF		4945				
11	18	74		5	OCT 75 SUGAR 11	COF		4940				
11	18	74		5	OCT 75 SUGAR 11	COF		4930				
11	18	74		2	OCT 75 SUGAR 11	COF		4950				
11	18	74		1	OCT 75 SUGAR 11	COF		4945				
11	18	74		5	OCT 75 SUGAR 11	COF		4930			2481762.50	
11	18	74		1	OCT 75 SUGAR 11	COF	288					
11	18	74			80 OCT 75 SUGAR 11	COF		5065				
11	18	74		3	OCT 75 SUGAR 11	COF		5065				
11	19	74		4	OCT 75 SUGAR 11	COF		5060				
11	19	74		17	OCT 75 SUGAR 11	COF		5060				
11	19	74		3	OCT 75 SUGAR 11	COF		5060				

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

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MR TASSOS ALEXIOU

UNREGULATED


**Merrill Lynch  
Pierce  
& Fenner & Smith Inc.**

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MR TASSOS ALEXIOU

UNREGULATED


**Merrill Lynch  
Pierce  
Fenner & Smith Inc.**

## STATEMENT OF COMMODITY ACCOUNT

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DATE			BOUGHT	SOLD	DESCRIPTION	MKT	EXPLAN- ATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
11	19	74		12	OCT 75 SUGAR 11	COF		5060				
11	19	74		2	OCT 75 SUGAR 11	COF		5065				
11	19	74			41 OCT 75 SUGAR 11		P&S			2481762.50	1246579.50	
11	20	74			CXL P&S OF 11/18/74							
11	20	74			OCT 75 SUGAR 11	COF		6005				
11	20	74	24		JUL 75 SUGAR 11	COF		6005				
11	20	74	33		JUL 75 SUGAR 11	COF		4954				
11	20	74		3	OCT 75 SUGAR 11	COF		4944				
11	20	74			AS OF 11/18/74							
11	20	74		1	OCT 75 SUGAR 11	COF		4944				
11	20	74			AS OF 11/18/74							
11	20	74		9	OCT 75 SUGAR 11	COF		4944				
11	20	74			AS OF 11/18/74							
11	20	74		3	OCT 75 SUGAR 11	COF		4950				
11	20	74			AS OF 11/18/74							
11	20	74		1	OCT 75 SUGAR 11	COF		4940				
11	20	74			AS OF 11/18/74							
11	20	74		15	OCT 75 SUGAR 11	COF		4950				
11	20	74			AS OF 11/18/74							
11	20	74		1	OCT 75 SUGAR 11	COF		4940				
11	20	74			AS OF 11/18/74							
11	20	74		6	OCT 75 SUGAR 11	COF		4950				
11	20	74			AS OF 11/18/74							
11	20	74		1	OCT 75 SUGAR 11	COF		4940				
11	20	74			AS OF 11/18/74							
11	20	74		1	OCT 75 SUGAR 11	COF		4940				
11	20	74			AS OF 11/18/74							

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MR TASSOS ALEXIOU

UNREGULATED


**Merrill Lynch  
Pierce  
Fenner & Smith Inc.**

## STATEMENT OF COMMODITY ACCOUNT

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MR TASSOS ALEXIOU

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**Merrill Lynch  
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Fenner & Smith Inc.**

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DATE			BOUGHT	SOLD	DESCRIPTION	MKT	EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
11	20	74		9	OCT 75 SUGAR 11	COF		4950				
					AS OF 11/18/74						269306.00	
					99 OCT 75 SUGAR 11		P88					
11	20	74			OCT 75 SUGAR	LDN		57000				
11	20	74	3		MAR 75 SUGAR 11	COF		6443				
11	21	74	3		MAR 75 SUGAR 11	COF		6440				
11	21	74	2		MAR 75 SUGAR 11	COF		6440				
11	21	74	25		MAR 75 SUGAR 11	COF		6435				
11	21	74	10		MAR 75 SUGAR 11	COF		6455				
11	21	74	9		MAR 75 SUGAR 11	COF		6140				
11	21	74	41		MAY 75 SUGAR 11	COF						
					AS OF 11/19/74							
11	21	74		24	OCT 75 SUGAR 11	COF		5155				
11	21	74		25	OCT 75 SUGAR 11	COF		5155				
11	21	74	26		JUL 75 COPPER	COM		6450				
11	21	74	24		JUL 75 COPPER	COM		6450				
11	21	74	50		JUL 75 COPPER	COM		6450				
11	21	74	10		JUL 75 COPPER	COM		6370				
11	21	74	26		JUL 75 COPPER	COM		6440				
11	21	74	9		JUL 75 COPPER	COM		6440				
11	21	74	10		JUL 75 COPPER	COM		6430				
					80 OCT 75 SUGAR 11		P88				2037690.60	
11	22	74		4	MAR 75 SUGAR	LDN		63000				
11	22	74		23	MAY 75 SUGAR	LDN		60200				
11	22	74		5	AUG 75 SUGAR	LDN		55400				
11	22	74			TFR FM 110 1 4 STK						829084.56	
11	26	74			9C							
11	26	74	4		MAR 75 SUGAR	LDN		57000				

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

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DATE			BOUGHT	SOLD	DESCRIPTION	MET	EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
11	26	74			4 MAR 75 SUGAR		PBS				27591.30	
11	26	74	23		MAY 75 SUGAR	LDN		54200			158649.98	
11	26	74			23 MAY 75 SUGAR		PBS				36231.00	
11	26	74	5		AUG 75 SUGAR	LDN		49100			799128.00	
11	26	74			5 AUG 75 SUGAR		PBS					
11	29	74			TFR FRM 11009914 STK							
					A C						1585078.12	
11	29	74			U.S. FDS CLOSING BALANCE							
ACCOUNT OPEN POSITIONS												
11	21	74	3		MAR 75 SUGAR 11	COF		6443	5320	37732.80		
11	21	74	9		MAR 75 SUGAR 11	COF		6435	5320	114408.00		
11	21	74	10		MAR 75 SUGAR 11	COF		6435	5320	124880.00		
11	21	74	25		MAR 75 SUGAR 11	COF		6440	5320	313600.00		
11	21	74	2		MAR 75 SUGAR 11	COF		6440	5320	25088.00		
11	21	74	49		UNREALIZED LOSS					615708.80		
11	18	74	5		MAY 75 SUGAR 11	COF		5935	5144	44296.00		
11	18	74	5		MAY 75 SUGAR 11	COF		5940	5144	44576.00		
11	18	74	3		MAY 75 SUGAR 11	COF		5920	5144	26073.60		
11	18	74	14		MAY 75 SUGAR 11	COF		5920	5144	121676.80		
11	18	74	23		MAY 75 SUGAR 11	COF		5944	5144	206080.00		
11	18	74	41		MAY 75 SUGAR 11	COF		6140	5144	457263.20		
11	19	74	91		UNREALIZED LOSS					900655.60		

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

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DATE			BOUGHT	SALE	DESCRIPTION	MET	EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
11	20	74	33		JUL 75 SUGAR 11	COM		6005	4805	443520.00		
11	20	74	24		JUL 75 SUGAR 11	COM		6005	4805	322560.00		
			57		UNREALIZED LOSS					766080.00		
11	21	74	10		JUL 75 COPPER	COM		6370	6310	1500.00		
11	21	74	10		JUL 75 COPPER	COM		6430	6310	3000.00		
11	21	74	4		JUL 75 COPPER	COM		6400	6310	1300.00		
11	21	74	26		JUL 75 COPPER	COM		6440	6310	8450.00		
11	21	74	50		JUL 75 COPPER	COM		6450	6310	17500.00		
11	21	74	24		JUL 75 COPPER	COM		6450	6310	8400.00		
11	21	74	26		JUL 75 COPPER	COM		6450	6310	9100.00		
11	21	74	150		UNREALIZED LOSS					49250.00		
11	20	74	3		OCT 75 SUGAR	LDN		57000	42000	52368.75		
			3		UNREALIZED LOSS					52368.75		
EVALUATED AS OF 11/29/74												
ACCOUNT BALANCE										2383473.15	1585078.12	
TOTAL UNREALIZED LOSS										798395.03		
DEFICIT												

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 MR DAVID PRINGLE  
 198 WELLINGTON CT  
 1ST FLOOR  
 KNIGHTSBRIDGE

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MR TASSOS ALEXIOU  
34 DEMOKRITOU STREET  
ATHENS TT 136  
GREECE 00000

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DATE	NO	DATE	DESCRIPTION	DEBIT	CREDIT	RELAT	BALANCE
11 29 74			U.S. FDS OPENING BALANCE				1585078.12
12 02 74			TFR TO 110 09914 STK				355288.00
12 02 74	3	OCT 75	SUGAR 11	COF	3955		
12 02 74	2	MAR 76	SUGAR 11	COF	3010		
12 02 74	5	JUL 75	COPPER	COM	6300		
12 02 74	10	JUL 75	COPPER	COM	6280		
12 02 74	1	JUL 75	COPPER	COM	6270		
12 02 74	10	JUL 75	COPPER	COM	6280		
12 02 74	13	JUL 75	COPPER	COM	6270		
12 02 74	4	JUL 75	COPPER	COM	6300		
12 02 74	1	JUL 75	COPPER	COM	6270		
12 02 74	5	JUL 75	COPPER	COM	6290		
12 02 74	19	JUL 75	COPPER	COM	6280		
12 02 74	7	JUL 75	COPPER	COM	6280		
12 02 74	16	JUL 75	COPPER	COM	6280		
12 02 74	4	JUL 75	COPPER	COM	6280		
12 02 74	3	JUL 75	COPPER	COM	6260		
12 02 74	19	JUL 75	COPPER	COM	6240		
12 02 74	5	JUL 75	COPPER	COM	6240		
12 02 74	9	JUL 75	COPPER	COM	6260		
12 02 74	14	JUL 75	COPPER	COM	6250		
12 02 74		150 JUL 75	COPPER	PBS		69599.50	
12 03 74	2	MAR 76	SUGAR 11	COF	2810		
12 03 74	5	MAY 76	SUGAR 11	COF	2380		
12 03 74	5	MAY 76	SUGAR 11	COF	2375		

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12 03 74	1	MAY 76	SUGAR 11	COF	2385
12 03 74	1	MAY 76	SUGAR 11	COF	2401
12 03 74	8	MAY 76	SUGAR 11	COF	2385
12 03 74	4	MAY 76	SUGAR 11	COF	2400
12 04 74	24	MAY 76	SUGAR 11	COF	2610
12 04 74	26	MAY 76	SUGAR 11	COF	2610
12 04 74	1	MAY 76	SUGAR 11	COF	2290
12 04 74	5	MAY 76	SUGAR 11	COF	2275
12 04 74	1	MAY 76	SUGAR 11	COF	2285
12 04 74	5	MAY 76	SUGAR 11	COF	2300
12 04 74	1	MAY 76	SUGAR 11	COF	2325
12 04 74	6	MAY 76	SUGAR 11	COF	2310
12 04 74	1	MAY 76	SUGAR 11	COF	2290
12 04 74	3	MAY 76	SUGAR 11	COF	2300
12 04 74	40	MAY 76	SUGAR 11	COF	2350
12 04 74	10	MAY 76	SUGAR 11	COF	2250
12 04 74	6	MAY 76	SUGAR 11	COF	2275
12 04 74	4	MAY 76	SUGAR 11	COF	2300
12 04 74	9	MAR 76	SUGAR	LDN	27550
12 04 74	1	MAR 76	SUGAR	LDN	27550
12 04 74	1	MAR 76	SUGAR	LDN	27550
12 04 74	20	MAR 76	SUGAR	LDN	27550
12 09 74		TRF FM	110 C9914 STK		
12 09 74		9*			
12 09 74	2	MAR 75	SUGAR 11	COF	4860
12 09 74	2	AS OF	12/06/74		
12 09 74		MAR 75	SUGAR 11	COF	4840

9857.73

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DATE MO DAY YR	BOUGHT	SELL	COMMODITY	UNIT	MARKET PRICE	DEBIT	CREDIT	BALANCE NUMBER
12 09 74	5		AS OF 12/06/74 MAR 75 SUGAR 11	COF	4810			
12 09 74	1		AS OF 12/06/74 MAR 75 SUGAR 11	COF	4850			
12 09 74		3	AS OF 12/06/74 MAR 75 SUGAR 11	COF	4880			
12 09 74	15		AS OF 12/06/74 MAR 75 SUGAR 11	COF	4816			
12 09 74	6		MAR 75 SUGAR 11	COF	4875			
12 09 74	3		MAR 75 SUGAR 11	COF	4816			
12 09 74	3		MAR 75 SUGAR 11	COF	4811			
12 09 74		3	MAR 75 SUGAR 11	P&S			52702.80	
12 09 74	1		MAY 75 SUGAR 11	COF	4670			
12 09 74	3		MAY 75 SUGAR 11	COF	4606			
12 09 74	5		MAY 75 SUGAR 11	COF	4670			
12 09 74	7		MAY 75 SUGAR 11	COF	4606			
12 09 74		16	MAY 75 SUGAR 11	P&S			233214.70	
12 09 74	1		JUL 75 SUGAR 11	COF	4341			
12 09 74	1		JUL 75 SUGAR 11	COF	4300			
12 09 74	2		JUL 75 SUGAR 11	COF	4284			
12 09 74	10		JUL 75 SUGAR 11	COF	4336			
12 09 74	3		JUL 75 SUGAR 11	COF	4310			
12 09 74		17	JUL 75 SUGAR 11	P&S			521176.90	
12 09 74			OCT 75 SUGAR 11	COF	3715			
12 09 74	2		OCT 75 SUGAR 11	COF	3734			
12 09 74	2		OCT 75 SUGAR 11	COF	3720			
12 09 74		3	OCT 75 SUGAR 11	P&S			7766.00	

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

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Merrill Lynch  
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DATE MO DAY YR	BOUGHT	SELL	COMMODITY	UNIT	MARKET PRICE	DEBIT	CREDIT	BALANCE NUMBER
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DATE MO DAY YR	BOUGHT	DESCRIPTION	UNIT	PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
12 09 74		10 MAY 76 SUGAR 11	COF	2560				
12 09 74	1	MAY 76 SUGAR 11	COF	2735				
		AS OF 12/06/74						
12 09 74		2 MAY 76 SUGAR 11	PBS	-		5950.50		
12 10 74		CXL PBS OF 12/09/74					5950.50	
		MAY 76 SUGAR 11	COF					
12 10 74		3 MAR 75 SUGAR 11	COF	4590				
12 10 74		3 MAR 75 SUGAR 11	PBS			62850.00		
		MAY 75 SUGAR 11	COF	4650				
		AS OF 12/06/74						
12 10 74		1 MAY 75 SUGAR 11	COF	4660				
		AS OF 12/06/74						
12 10 74		3 MAY 75 SUGAR 11	COF	4810				
		AS OF 12/06/74						
12 10 74		5 MAY 75 SUGAR 11	COF	4600				
		AS OF 12/06/74						
12 10 74		1 MAY 75 SUGAR 11	COF	4653				
		AS OF 12/06/74						
12 10 74		2 MAY 75 SUGAR 11	COF	4810				
		AS OF 12/06/74						
12 10 74		1 MAY 75 SUGAR 11	COF	4906				
12 10 74		16 MAY 75 SUGAR 11	PBS			227761.60		
12 10 74	5	JUL 75 SUGAR 11	COF	4520				
		AS OF 12/06/74						
12 10 74		16 JUL 75 SUGAR 11	COF	4084				
12 10 74		4 JUL 75 SUGAR 11	COF	4084				
12 10 74		5 JUL 75 SUGAR 11	COF	4084				

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

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12 10 74	20	JUL 75 SUGAR 11	COF	4084			
12 10 74		45 JUL 75 SUGAR 11	COF				
12 10 74	3	OCT 75 SUGAR 11	COF	3860	897686.90		
		AS OF 12/06/74					
12 10 74	2	MAR 76 SUGAR 11	COF	2809			
12 10 74	12	MAR 76 SUGAR 11	COF	2809			
12 10 74	1	MAR 76 SUGAR 11	COF	2774			
12 10 74	1	MAR 76 SUGAR 11	COF	2705			
12 10 74	1	MAR 76 SUGAR 11	COF	2710			
12 10 74	1	MAR 76 SUGAR 11	COF	2700			
12 10 74	1	MAR 76 SUGAR 11	COF	2779			
12 10 74	1	MAR 76 SUGAR 11	COF	2716			
12 10 74	5	MAR 76 SUGAR 11	COF	2809			
12 10 74	16	MAR 76 SUGAR 11	COF	2809			
12 10 74	2	MAR 76 SUGAR 11	COF	2804			
12 10 74	2	MAR 76 SUGAR 11	COF	2600			
12 10 74	4	MAR 76 SUGAR 11	COF	2784			
12 10 74	1	MAR 76 SUGAR 11	COF	2605			
12 10 74	2	MAR 76 SUGAR 11	COF	2784			
12 10 74	3	MAR 76 SUGAR 11	COF	2610			
12 10 74	2	MAR 76 SUGAR 11	COF	2600			
12 10 74	1	MAR 76 SUGAR 11	COF	2600			
12 10 74		54 MAR 76 SUGAR 11	PBS		82474.70		
12 10 74	1	MAR 76 SUGAR	LDN	27000			
12 10 74		1 MAR 76 SUGAR	PBS			569.01	
12 11 74	10	MAR 75 SUGAR 11	COF	4410			
12 11 74		MAR 75 SUGAR 11	COF	4390			

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

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MR TASSOS ALEXIOU

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DATE		BOUGHT	SOLD	DESCRIPTION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BALANCE NUMBER
MO	DAY								
12	11	74		10 MAR 75 SUGAR 11	COF	4390			
12	11	74		20 MAR 75 SUGAR 11	P&S		228040.00		
12	11	74		2 MAY 75 SUGAR 11	COF	4206			
12	11	74		16 MAY 75 SUGAR 11	COF	4206			
12	11	74		4 MAY 75 SUGAR 11	COF	4206			
12	11	74		10 MAY 75 SUGAR 11	COF	4206			
12	11	74		32 MAY 75 SUGAR 11	P&S		655028.80		
12	11	74	1	JUL 75 SUGAR 11	COF	3936			
12	11	74	5	JUL 75 SUGAR 11	COF	3941			
12	11	74	5	JUL 75 SUGAR 11	COF	3940			
12	11	74	5	JUL 75 SUGAR 11	COF	3935			
12	11	74	1	JUL 75 SUGAR 11	COF	3941			
12	11	74	5	JUL 75 SUGAR 11	COF	3935			
12	11	74	10	JUL 75 SUGAR 11	COF	3946			
12	11	74	10	JUL 75 SUGAR 11	COF	3960			
12	11	74	1	MAY 76 SUGAR 11	COF	2520			
12	11	74	5	MAY 76 SUGAR 11	COF	2600			
12	11	74	4	MAY 76 SUGAR 11	COF	2510			
12	11	74	2	MAY 76 SUGAR 11	COF	2530			
12	11	74	3	MAY 76 SUGAR 11	COF	2475			
12	11	74	1	MAY 76 SUGAR 11	COF	2535			
12	11	74	1	MAY 76 SUGAR 11	COF	2430			
12	11	74	1	MAY 76 SUGAR 11	COF	2540			
12	11	74	1	MAY 76 SUGAR 11	COF	2550			
12	11	74		1 MAY 76 SUGAR 11	P&S		3802.80		
12	11	74		19 MAY 76 SUGAR 11	P&S		32590.90		
12	11	74		1 MAR 76 SUGAR	LDN	27000			

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

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DATE MO DAY YR	BOUGHT	SELL	DESCRIPTION	EXPLAN	PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
12 12 74		5	MAR 75 SUGAR 11	COF	4295				
12 12 74		5	MAR 75 SUGAR 11	P&S					
12 12 74		5	MAY 75 SUGAR 11	COF	4006		120414.50		
12 12 74		5	MAY 75 SUGAR 11	P&S					
12 12 74		5	JUL 75 SUGAR 11	COF	3884		119814.00		
12 12 74			AS OF 12/11/74						
12 12 74		5	JUL 75 SUGAR 11	COF	3884				
12 12 74			AS OF 12/11/74						
12 12 74		5	JUL 75 SUGAR 11	COF	3884				
12 12 74			AS OF 12/11/74						
12 12 74		1	JUL 75 SUGAR 11	COF	3884				
12 12 74			AS OF 12/11/74						
12 12 74		10	JUL 75 SUGAR 11	COF	3884				
12 12 74			AS OF 12/11/74						
12 12 74		5	JUL 75 SUGAR 11	COF	3884				
12 12 74			AS OF 12/11/74						
12 12 74		10	JUL 75 SUGAR 11	COF	3884				
12 12 74			AS OF 12/11/74						
12 12 74		1	JUL 75 SUGAR 11	COF	3884				
12 12 74			AS OF 12/11/74						
12 12 74		42	JUL 75 SUGAR 11	P&S			31320.80		
12 12 74		1	SEP 75 SUGAR 11	COF	305				
12 12 74		1	OCT 75 SUGAR 11	COF	317				
12 12 74		5	OCT 75 SUGAR 11	COF	3290				
12 12 74			AS OF 12/11/74						
12 12 74		2	OCT 75 SUGAR 11	COF	3290				
12 12 74			AS OF 12/11/74						

MR TASSOS ALEXIOU

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DATE			BOUGHT	SOLD	DESCRIPTION	MKT EXPLAN ATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR									
12	12	74			1 OCT 75 SUGAR 11	COF	3290				
					AS OF 12/11/74						
12	12	74			4 OCT 75 SUGAR 11	COF	3090				
12	12	74			10 OCT 75 SUGAR 11	COF	3250				
12	12	74			1 OCT 75 SUGAR 11	COF	3090				
12	12	74	5		1 OCT 75 SUGAR 11	COF	3300				
12	12	74			3 OCT 75 SUGAR 11	COF	2735				
12	12	74			10 OCT 75 SUGAR 11	PBS			32293.60		
12	12	74			1 MAR 76 SUGAR 11	COF	2690				
12	12	74	1		MAR 76 SUGAR 11	COF	2600				
12	12	74	1		MAR 76 SUGAR 11	COF	2530				
					AS OF 12/11/74						
12	12	74			1 MAR 76 SUGAR 11	COF	2690				
12	12	74			1 MAR 76 SUGAR 11	COF	2690				
12	12	74	5		MAR 76 SUGAR 11	COF	2700				
12	12	74			2 MAR 76 SUGAR 11	COF	2560				
12	12	74			2 MAR 76 SUGAR 11	COF	2690				
12	12	74			1 MAR 76 SUGAR 11	COF	2690				
12	12	74			1 MAR 76 SUGAR 11	COF	2560				
12	12	74			1 MAR 76 SUGAR 11	COF	2710				
12	12	74			10 MAR 76 SUGAR 11	PBS			3651.30		
12	12	74	1		MAY 76 SUGAR 11	COF	2470				
12	12	74	1		MAY 76 SUGAR 11	COF	2600				
12	12	74	1		MAY 76 SUGAR 11	COF	2470				
12	12	74	1		MAY 76 SUGAR 11	COF	2575				
12	12	74	5		MAY 76 SUGAR 11	COF	2600				
12	12	74	1		MAY 76 SUGAR 11	COF	2470				

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

MR TASSOS ALEXIOU

UNREGULATED



**Merrill Lynch  
Pierce  
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Please return this document to the custody of the  
accountant. After sending, please return the  
document to the account as soon as possible to the  
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**Merrill Lynch  
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## STATEMENT OF COMMODITY ACCOUNT

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DATE			BOUGHT	SOLD	DESCRIPTION	UNIT	TERMINATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
12	12	74	1		MAY 76 SUGAR 11		COF	2575				
12	12	74	2		MAY 76 SUGAR 11		COF	2575				
12	12	74			13 MAY 76 SUGAR 11		P&S					
12	12	74	5		OCT 75 SUGAR		LDN	30500		36646.00		
12	13	74		2	MAR 75 SUGAR 11		COF	4400				
12	13	74			MAR 75 SUGAR 11		COF	4470				
12	13	74			4 MAR 75 SUGAR 11		P&S					
12	13	74			MAY 75 SUGAR 11		COF	4155		70408.00		
12	13	74	5		MAY 75 SUGAR 11		COF	4200				
12	13	74			10 MAY 75 SUGAR 11		P&S					
12	13	74	1		JUL 75 SUGAR 11		COF	3930		220420.00		
12	13	74	1		JUL 75 SUGAR 11		COF	3930				
12	13	74	1		JUL 75 SUGAR 11		COF	3936				
12	13	74	5		JUL 75 SUGAR 11		COF	3940				
12	13	74	1		SEP 75 SUGAR 11		COF	3670				
12	13	74			1 SEP 75 SUGAR 11		P&S					
12	13	74	2		MAR 76 SUGAR 11		COF	2625		3651.00		
12	13	74		2	MAR 76 SUGAR 11		COF	2680				
12	13	74		3	MAR 76 SUGAR 11		COF	2626				
12	13	74	3		MAR 76 SUGAR 11		COF	2725				
12	13	74	1		MAR 76 SUGAR 11		COF	2724				
12	13	74			7 MAR 76 SUGAR 11		P&S					
12	13	74	7		OCT 75 SUGAR		LDN	32300		6157.20		
					AS OF 12/12/74							
12	13	74	2		OCT 75 SUGAR		LDN	32500				
					AS OF 12/11/74							
12	13	74	3		OCT 75 SUGAR		LDN	32500				

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FOR TASSOS ALEXPOU

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DATE			BOUGHT	SOLD	DESCRIPTION	UNIT	EXPLAIN	TRADE PRICE	WHOLESALE PRICE	DEBIT	CREDIT	BALANCE
MO	DAY	YR										

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

MR TASSOS ALEXIOU

UNREGULATED


**Merrill Lynch  
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## STATEMENT OF COMMODITY ACCOUNT

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DATE MO DAY YR	BOUGHT	SELL	DESCRIPTION	UNIT	EXPIRATION DATE	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BALANCE NUMBER
12 13 74	3		AS OF 12/12/74							
12 13 74	4		MAR 76 SUGAR	LDN		29000				
12 13 74	2		MAR 76 SUGAR	LDN		29100				
12 13 74	3		MAR 76 SUGAR	LDN		29600				
12 13 74	2		MAR 76 SUGAR	LDN		29000				
12 13 74	3		MAR 76 SUGAR	LDN		29600				
12 13 74	7		MAR 76 SUGAR	LDN		29500				
12 13 74			MAR 76 SUGAR	LDN		29500				
12 16 74		8	24 MAR 76 SUGAR	P&S				50948.77		
12 16 74		8	MAR 75 SUGAR 11	COF		4237				
12 16 74		8	MAR 75 SUGAR 11	P&S				197860.00		
12 16 74	5		JUL 75 SUGAR 11	COF		3787				
12 16 74	1		JUL 75 SUGAR 11	COF		3787				
12 16 74	1		JUL 75 SUGAR 11	COF		3787				
12 16 74	1		JUL 75 SUGAR 11	COF		3787				
12 16 74		1	8 JUL 75 SUGAR 11	P&S					13000.00	
12 16 74		1	MAY 76 SUGAR 11	COF		2390				
12 16 74		1	AS OF 12/03/74							
12 16 74		1	MAY 76 SUGAR 11	COF		2560				
12 16 74			AS OF 12/09/74							
12 16 74	2		MAR 75 SUGAR	LDN		29500				
12 16 74		1	MAR 75 SUGAR	LDN		42200				
12 16 74	1		MAR 75 SUGAR	LDN		29700				
12 16 74		2	MAR 75 SUGAR	LDN		42200				
12 16 74			MAR 75 SUGAR	P&S					44048.65	
12 16 74		9	MAY 75 SUGAR	LDN		40200				
12 16 74	1		MAY 75 SUGAR	LDN		40200				

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MR TASSOS ALEXIOU

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DATE	BOUGHT	DATE	DESCRIPTION	EXPLAN	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO DAY YR									
12 16 74	8		MAY 75 SUGAR	LDN	40200				
12 16 74			9 MAY 75 SUGAR	PBS			314.88		
12 16 74		1	AUG 75 SUGAR	LDN	35700				
12 16 74		5	OCT 75 SUGAR	LDN	31850				
12 16 74		2	OCT 75 SUGAR	LDN	31850				
12 16 74		1	OCT 75 SUGAR	LDN	31750				
12 16 74		1	OCT 75 SUGAR	LDN	31750				
12 16 74		1	OCT 75 SUGAR	LDN	31850				
12 16 74		10	OCT 75 SUGAR	PBS			82570.50		
12 16 74	2		MAR 76 SUGAR	LDN	29500				
12 16 74	4		MAR 76 SUGAR	LDN	29700				
12 16 74		6	MAR 76 SUGAR	PBS			14997.97		
12 17 74			CXL PBS OF 12/16/74				44048.65		
12 17 74			MAR 75 SUGAR	LDN					
12 17 74		1	MAR 75 SUGAR 11	COF	4037				
12 17 74		3	MAR 75 SUGAR 11	COF	4037				
12 17 74		1	MAR 75 SUGAR 11	COF	4037				
12 17 74		2	MAR 75 SUGAR 11	COF	4037				
12 17 74		2	MAR 75 SUGAR 11	COF	4037				
12 17 74		15	MAR 75 SUGAR 11	COF	4037				
12 17 74		1	MAR 75 SUGAR 11	COF	4037				
12 17 74		2	MAR 75 SUGAR 11	COF	4237				
12 17 74			AS OF 12/16/74						
12 17 74		2	MAR 75 SUGAR 11	COF	4037				
12 17 74		3	MAR 75 SUGAR 11	COF	4037				
12 17 74		4	MAR 75 SUGAR 11	COF	4037				
12 17 74		4	MAR 75 SUGAR 11	COF	4037				

MR TASSOS ALEXIOU

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MR TASSOS ALEXIOU

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DATE			BOUGHT	SOLD	DESCRIPTION	MAY	EXPLAN	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR										
12	17	74		1	MAR 75 SUGAR 11		COF	4037				
12	17	74		12	MAR 75 SUGAR 11		COF	4037				
12	17	74			51 MAR 75 SUGAR 11		P&S			743816.30		
12	17	74	15		MAY 75 SUGAR 11		STR COF	3827				
12	17	74	2		JUL 75 SUGAR 11		COF	3787				
12	17	74			AS OF 12/16/74							
12	17	74	10		OCT 75 SUGAR 11		COF	3122				
12	17	74	1		OCT 75 SUGAR 11		COF	3122				
12	17	74	4		OCT 75 SUGAR 11		COF	3117				
12	17	74	20		OCT 75 SUGAR 11		STR COF	3127				
12	17	74	4		OCT 75 SUGAR 11		COF	3122				
12	17	74	7		OCT 75 SUGAR 11		COF	3117				
12	17	74	5		OCT 75 SUGAR 11		COF	3122				
12	17	74		19	OCT 75 SUGAR 11		P&S				21132.40	
12	17	74	2		MAR 76 SUGAR 11		COF	2570				
12	17	74			AS OF 12/11/74							
12	17	74	4		MAR 76 SUGAR 11		COF	2640				
12	17	74			AS OF 12/11/74							
12	17	74	2		MAR 76 SUGAR 11		COF	2530				
12	17	74			AS OF 12/11/74							
12	17	74	2		MAR 76 SUGAR 11		COF	2640				
12	17	74			AS OF 12/11/74							
12	17	74	1		MAR 76 SUGAR 11		COF	2520				
12	17	74			AS OF 12/11/74							
12	17	74	4		MAR 76 SUGAR 11		COF	2640				
12	17	74			AS OF 12/11/74							
12	17	74	5		MAR 76 SUGAR 11		COF	2575				

EXHIBIT C TO AFFIDAVIT OF J. VILLALBA

MR TASSOS ALEXIOU

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DATE MO DAY YR	QUANTITY	DESCRIPTION	UNIT	EXPLAN	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
12 17 74	1	AS OF 12/11/74		COF	2555				
		MAR 76 SUGAR 11							
12 17 74	8	AS OF 12/11/74		COF	2650				
		MAR 76 SUGAR 11							
12 17 74	2	AS OF 12/11/74		COF	2650				
		MAR 76 SUGAR 11							
12 17 74		AS OF 12/11/74		COF	2325				
		MAR 76 SUGAR 11							
12 17 74	6	MAR 76 SUGAR 11		COF	2340				
12 17 74	9	MAR 76 SUGAR 11		COF	2340				
12 17 74		MAR 76 SUGAR 11		COF	2525				
12 17 74		AS OF 12/16/74		COF	2525				
12 17 74	11	MAR 76 SUGAR 11							
12 17 74	10	AS OF 12/16/74		COF	2550				
		MAR 76 SUGAR 11							
12 17 74	15	AS OF 12/16/74		COF	2492				
		MAR 76 SUGAR 11		STR COF	2375				
12 17 74	2	MAR 76 SUGAR 11		COF	2340				
12 17 74	5	MAR 76 SUGAR 11		COF	2365				
12 17 74	2	MAR 76 SUGAR 11		COF	2370				
12 17 74	1	MAR 76 SUGAR 11		COF	2535				
12 17 74	5	MAR 76 SUGAR 11		COF					
		AS OF 12/16/74							
12 17 74	5	MAR 76 SUGAR 11		COF	2530				
		AS OF 12/16/74							
12 17 74		51 MAR 76 SUGAR 11		P&S					
12 17 74	3	MAY 76 SUGAR 11		COF	2270				
							13242.00		

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MR TASSOS ALEXIOU

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DATE			BOUGHT	SOLD	DESCRIPTION	EXPLANATION	TRADE PRICE	MARKET PRICE	DEBIT	CREDIT	BANK NUMBER
MO	DAY	YR									
12	17	74	4		MAY 76 SUGAR 11	COF	2300				
12	17	74	7		MAY 76 SUGAR 11	COF	2470				
					AS OF 12/16/74						
12	17	74	5		MAY 76 SUGAR 11	COF	2275				
12	17	74	3		MAY 76 SUGAR 11	COF	2295				
12	17	74	2		MAY 76 SUGAR 11	COF	2290				
12	17	74	3		MAY 76 SUGAR 11	COF	2290				
12	17	74	5		MAY 76 SUGAR 11	COF	2300				
12	17	74	10		MAY 76 SUGAR 11	COF	2445				
					AS OF 12/16/74						
12	17	74	2		MAY 76 SUGAR 11	COF	2455				
					AS OF 12/16/74						
12	17	74	2		MAY 76 SUGAR 11	COF	2270				
12	17	74	1		MAY 76 SUGAR 11	COF	2450				
					AS OF 12/16/74						
12	17	74	2		MAY 76 SUGAR 11	COF	2270				
12	17	74	3		MAY 76 SUGAR 11	COF	2490				
					AS OF 12/16/74						
12	17	74	1		MAY 76 SUGAR 11	COF	2300				
12	17	74	5		MAY 76 SUGAR 11	COF	2435				
					AS OF 12/16/74						
12	17	74	1		MAY 76 SUGAR 11	COF	2295				
12	17	74	10		MAY 76 SUGAR 11	COF	2465				
					AS OF 12/16/74						
12	17	74		31	MAY 76 SUGAR 11	COF	2425				
					AS OF 12/16/74						
12	17	74	29		MAY 76 SUGAR 11	COF	2425				

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MR TASSOS ALEXIOU

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DATE	MO	DAY	AMOUNT	DESCRIPTION	MARKET PRICE	DEBIT	CREDIT	BALANCE
12 17 74				AS OF 12/16/74				
12 17 74				31 MAY 76 SUGAR 11	P&S		420.50	
12 17 74	3			MAR 75 SUGAR	LDN	40200		
12 17 74	2			MAR 75 SUGAR	LDN	29500		
12 17 74				CANCEL TRADE 12/16/74				
12 17 74	1			MAR 75 SUGAR	LDN	29700		
12 17 74				CANCEL TRADE 12/16/74				
12 17 74	35			MAY 75 SUGAR	LDN	38200		
12 17 74	1			AUG 75 SUGAR	LDN	33720		
12 17 74				1 AUG 75 SUGAR	P&S		2260.10	
12 17 74	5			OCT 75 SUGAR	LDN	29750		
12 17 74	2			OCT 75 SUGAR	LDN	29750		
12 17 74				OCT 75 SUGAR	LDN	29750		
12 17 74				10 OCT 75 SUGAR	P&S		31138.87	
12 17 74				3 MAR 76 SUGAR	P&S		7907.17	
12 17 74	35			MAY 76 SUGAR	LDN	23850		
12 17 74	35			MAY 76 SUGAR	LDN	23200		
12 17 74				35 MAY 76 SUGAR	P&S		27756.74	
12 17 74				CXL P&S OF 12/17/74				7907.17
12 17 74				MAR 76 SUGAR	LDN			
12 17 74				2 MAR 75 SUGAR 11	P&S		14415.20	
12 18 74	3			MAY 75 SUGAR 11	COF	3900		
12 18 74	2			MAY 75 SUGAR 11	COF	3875		
12 18 74	1			MAY 75 SUGAR 11	COF	3880		
12 18 74	1			MAY 75 SUGAR 11	COF	3910		
12 18 74	1			MAY 75 SUGAR 11	COF	3885		
12 18 74	2			JUL 75 SUGAR 11	COF	3740		

EXHIBIT C TO AFFIDAVIT OF WILLALEA

MR TASSOS ALEXIOU

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**Merrill Lynch  
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Fenner & Smith Inc.**

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DATE	MO	DAY	YEAR	DESCRIPTION	MARKET PRICE	DEBIT	CREDIT
12 18 74				2 JUL 75 SUGAR 11	P&S		1181.80
12 18 74				1 OCT 75 SUGAR 11	COF	3150	
12 18 74				1 OCT 75 SUGAR 11	COF	3150	
12 18 74				3 OCT 75 SUGAR 11	STR COF	3130	
12 18 74				5 OCT 75 SUGAR 11	COF	3100	
12 18 74				5 OCT 75 SUGAR 11	COF	3030	
12 18 74				5 OCT 75 SUGAR 11	COF	3080	
12 18 74				7 OCT 75 SUGAR 11	COF	3100	
12 18 74				3 OCT 75 SUGAR 11	COF	3080	
12 18 74				2 OCT 75 SUGAR 11	COF	3080	
12 18 74				3 OCT 75 SUGAR 11	P&S		
12 18 74				29 OCT 75 SUGAR 11	P&S		7.80
12 18 74				MAR 76 SUGAR 11	COF	2573	
12 18 74				MAR 76 SUGAR 11	COF	2570	
12 18 74				15 MAR 76 SUGAR 11	P&S		14370.00
12 18 74				MAY 76 SUGAR 11	COF	2500	
12 18 74				MAY 76 SUGAR 11	COF	2460	
12 18 74				MAY 76 SUGAR 11	COF	2450	
12 18 74				MAY 76 SUGAR 11	COF	2470	
12 18 74				20 MAY 76 SUGAR 11	P&S		16136.00
12 18 74				67 MAY 76 SUGAR 11	P&S		47243.40
12 18 74				3 MAR 75 SUGAR	P&S		6816.68
12 19 74				2 MAY 75 SUGAR 11	COF	3880	
12 19 74				5 MAY 75 SUGAR 11	COF	3930	
12 19 74				2 MAY 75 SUGAR 11	COF	3883	
12 19 74				2 MAY 75 SUGAR 11	COF	3915	
12 19 74				2 MAY 75 SUGAR 11	COF	3900	




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Pierce  
Fenner & Smith Inc.**

## STATEMENT OF COMMODITY ACCOUNT

DATE	MO	DAY	YEAR	DESCRIPTION	MARKET PRICE	DEBIT	CREDIT
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MR TASSOS ALEXIOU

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AFFIDAVIT OF T.J. MULLANEY IN  
OPPOSITION TO MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	Index No.
	:	75 Civ. 828 (W.K.)
ANASTASIOS ALEXIOU, a/k/a TASSOS ALEXIOU,	:	<u>AFFIDAVIT</u>
	:	
Defendant.	:	

-----x

STATE OF NEW YORK     )  
                              :     ss.:  
COUNTY OF NEW YORK    )

THOMAS J. MULLANEY, being duly sworn, deposes and says:

1. I am associated with the law firm of Brown, Wood, Fuller, Caldwell & Ivey, the attorneys for the plaintiff in this action, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"). I make this affidavit in opposition to the defendant's motion to dismiss this action for lack of jurisdiction over his person.

2. The purpose of this affidavit is to advise the Court of certain state court proceedings which may have a bearing on the jurisdiction of this Court.

3. Merrill Lynch obtained an order of attachment against the defendant in this action in Supreme Court, New York County on December 24, 1974, before this action was removed to this Court. A copy of said order of attachment was then served by the Sheriff upon Bache & Co. Incorporated ("Bache"). At the time of that service, Bache was in the possession of

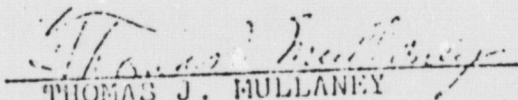
AFFIDAVIT OF T.J. MULLANEY IN  
OPPOSITION TO MOTION TO DISMISS

an account valued at approximately \$500,000 and maintained in the name of Admitos Compania Naviera, S.A. ("Admitos"), a Panamanian corporation which Merrill Lynch contends is the alter ego of Mr. Alexiou.


4. On January 9, 1975 Merrill Lynch commenced a special proceeding against Bache in Supreme Court, New York County pursuant to CPLR §6214(d) to compel payment of this account to the Sheriff pursuant to its order of attachment against Mr. Alexiou. Subsequently Admitos commenced an opposing special proceeding in Supreme Court, New York County to compel payment of the account at Bache to it. Both special proceedings were argued before Justice Korn in the Supreme Court, New York County on March 3, 1975 and are still sub judice.

5. In the interim, this action was removed to this Court on or about February 20, 1975.

6. In the event that it is determined in the special proceedings in Supreme Court, New York County that the account at Bache is the property of the defendant in this action and should be turned over to the Sheriff pursuant to Merrill Lynch's order of attachment, it is submitted that said attachment would be a source of quasi in rem jurisdiction for this Court to proceed in this action.

  
THOMAS J. MULLANEY

Sworn to before me this  
17th day of April, 1975.

  
Notary Public, State of New York  
My Comm. Expires March 30, 1976



REPLY AFFIDAVIT OF M. J. McALLISTER IN SUPPORT OF MOTION  
TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
HENRILL LYNCH, PIERCE, FENNER & :  
SMITH INCORPORATED, : 75 Civ. 823 (WK)  
Plaintiff, :  
-against- : REPLY AFFIDAVIT  
ANASTASIOS ALEXIOU, a/k/a :  
TASSOS ALEXIOU, :  
Defendant. :

----- x  
STATE OF NEW YORK  
SOUTHERN DISTRICT OF NEW YORK:

MICHAEL J. McALLISTER, being duly sworn, says:

1. I am a member of Lunney & Crocco, attorneys for defendant Anastasios Alexiou, and am familiar with the facts herein. This affidavit is submitted in reply to plaintiff's papers in opposition to defendant's motion to dismiss this action for lack of personal jurisdiction.

2. The affidavit of Jeronimo Villalba, sworn to April 14, 1975 and submitted by plaintiff, asserts that in connection with a certain alleged transaction on December 3, 1974, defendant participated in a telephone call with a New York trader employed by plaintiff. (§ 4) The critical point that this affidavit fails to establish is that the



REPLY AFFIDAVIT OF M. J. MCALLISTER IN SUPPORT OF MOTION  
TO DISMISS

order in question was given to the New York trader directly by defendant.

3. In a long-distance telephone conversation with defendant on April 18, 1975, I read him the pertinent portion of the Villalba affidavit. (14) Defendant stated that he never gave an order to the New York trader as alleged by Villalba.

4. Regarding the remaining averments in the Villalba affidavit, whether they be true or not, they also fail to establish that defendant was physically present within New York. Accordingly, plaintiff has failed to prove that this Court has jurisdiction over defendant and the action should be dismissed.

s/ Michael J. McAllister  
MICHAEL J. MCALLISTER

Sworn to before me

April 24, 1975.

s/ Lee M. Fuller, Jr.  
Notary Public

AFFIDAVIT OF F.X. FLANNERY  
IN OPPOSITION TO MOTION TO DISMISS

4/24/75

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	Index No.
	:	75 Civ. 828 (W.K.)
ANASTASTIOS ALEXIOU, a/k/a TASSOS ALEXIOU,	:	<u>AFFIDAVIT</u>
	:	
Defendant.	:	

-----x

STATE OF NEW YORK     )  
                              :     ss.:  
COUNTY OF NEW YORK    )

FRANCIS X. FLANNERY, being duly sworn, deposes and  
says:

1. I am an attorney in the Law Department of Merrill  
Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch").  
I make this affidavit to inform this Court of certain facts  
concerning litigation in Greece between the parties to this  
action. I make this affidavit on information and belief based  
upon telephone and telegraph communications between myself  
and European counsel for Merrill Lynch.

2. Following the institution of this action in the New  
York Supreme Court, Merrill Lynch commenced a proceeding in  
Greece to obtain a pre-notification mortgage on certain real  
property of the defendant located in Greece. A pre-notification  
mortgage in Greek law is similar to an attachment of a  
defendant's real property. It gives a plaintiff a pre-  
judgment security interest in a defendant's real property.  
It is not the equivalent of an action on the merits.

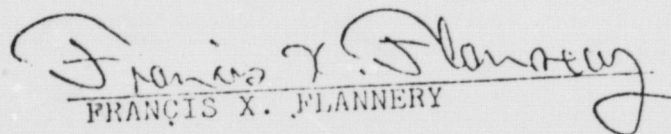


AFFIDAVIT OF F.X. FLANNERY  
IN OPPOSITION TO MOTION TO DISMISS

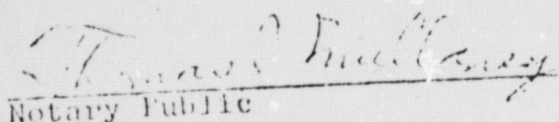
3. On March 19, 1975 Merrill Lynch's application for a pre-notification mortgage came on for a hearing at the Courthouse in Nauplion, Greece. At that hearing, Mr. Alexiou's counsel argued that the Court lacked jurisdiction because of the provisions in the Commodity Account Agreement between Merrill Lynch and Alexiou, which provided for arbitration and also provided that the Agreement and its enforcement shall be governed by the laws of the State of New York.

4. On April 16, 1975 the Greek Court advised Merrill Lynch's counsel in Nauplion of its decision to deny the application for a pre-notification mortgage on the grounds that the Commodity Account Agreement deprived the Greek Court of jurisdiction over this proceeding. A copy of a telex relaying this information to me is annexed hereto as Exhibit A.

5. It is expected that the Greek Court will issue a formal written opinion stating its decision within approximately one week from today. I will provide this Court with a copy of that opinion and a translation when it is issued.

  
FRANCIS X. FLANNERY

Sworn to before me this  
24th day of April, 1975

  
Notary Public

THOMAS J. MELLANEY  
Notary Public, State of New York  
No. 30-812255  
Qualified in Nassau County  
Cert. Filed in New York County  
Commission Expires March 30, 1978



EXHIBIT A TO  
AFFIDAVIT OF F.X. FLANNERY

124 WL 54 RB 042375-1300

ML LAW FLANNERY

THE FOLLOWING TELEX WAS RECEIVED IN THIS OFFICE ON  
APRIL 16, 1975. QUOTE

LAW OFFICES OF ZEPOS AND ZEPOS  
APRIL 16, 1975

ATTN R. RICHARD PILIERO

WERE JUST INFORMED BY MR. VATHIS/NAUPLION ATTORNEY/  
THAT THE JUDGE HAS NOT ACCEPTED OUR PETITION FOR LACK  
OF JURISDICTION ON ACCOUNT OF THE EXPRESS PROVISIONS  
REGARDING ARBITRATION AND ENFORCEMENT PROCEDURES GOVERNED  
BY NY LAWS CONTAINED IN THE AGREEMENT.

IT IS EXPECTED THAT COURT'S DECISION WILL BE ISSUED FOR-  
MALLY IN ABOUT TWO WEEKS TIME WHEN WE WILL KNOW PRECISELY  
THE REASONS.

DO YOU STILL NEED THE TRANSLATIONS REQUESTED BY YOUR  
TELEX OF 14.4.74.

REGARDS  
ZEPOS  
UNQUOTE

RICHARD PILIERO  
MERRILL LYNCH  
LAW DEPT GENEVA

AFFIDAVIT OF T.J. MULLANEY IN  
OPPOSITION TO MOTION TO DISMISS

5/13/75

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

MERRILL LYNCH, PIERCE, FENNER & :  
SMITH INCORPORATED, :

Plaintiff, :

75 Civ. 828 (WK)

- against - :

ANASTASIOS ALEXIOU, a/k/a :  
TASSOS ALEXIOU, :

AFFIDAVIT IN  
OPPOSITION TO  
MOTION TO DISMISS

Defendant. :

-----x

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

THOMAS J. MULLANEY, being duly sworn, deposes and says:

1. I am associated with the law firm of Brown, Wood, Fuller, Caldwell & Ivey, the attorneys for the plaintiff in this action, Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch). I make this additional affidavit in opposition to the defendant's motion to dismiss this action for lack of jurisdiction over his person.

2. In my affidavit dated April 17, 1975 and in oral argument before the Court on April 25, 1975, I advised the Court that certain turnover proceedings were being conducted in the Supreme Court, New York County pursuant to Merrill Lynch's Order of Attachment against Tassos Alexiou. In these special proceedings, Merrill Lynch is seeking to prove that a certain account at Bache & Co., Incorporated maintained in the name of Admitos Compania Naviera, S.A. is in fact the



AFFIDAVIT OF T.J. MULLANEY IN  
OPPOSITION TO MOTION TO DISMISS

property of Tassos Alexiou and is therefore subject to its Order of Attachment.

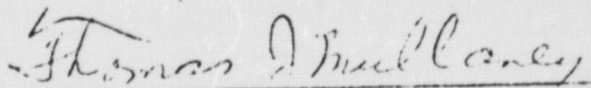
3. On May 5, 1975, Justice Korn of the Supreme Court, New York County ordered certain discovery to take place in order to determine the true ownership of the account at Bache. In so doing, Justice Korn expressed the opinion that Tassos Alexiou was subject to personal jurisdiction in New York under C.P.L.R. §302(a)(1):

"The attachment herein was for security purposes only, since jurisdiction was obtained over Alexiou under C.P.L.R. 302(a)(1)." Slip Opinion, p. 2.

C.P.L.R. §302(a)(1) is the same section of New York's long arm statute which Merrill Lynch has previously cited to this Court in support of this Court's jurisdiction. It provides for personal jurisdiction over any person who "transacts any business within the state". (A copy of Judge Korn's complete opinion is annexed hereto as Exhibit A).

4. On a related matter, I have not yet received from Greece a copy of the briefs or of the Greek Court's opinion in which that Court decided that it lacked jurisdiction over Merrill Lynch's application for a prenotification mortgage on the real property of Tassos Alexiou. I will provide that material and a translation to this Court as soon as it is received.

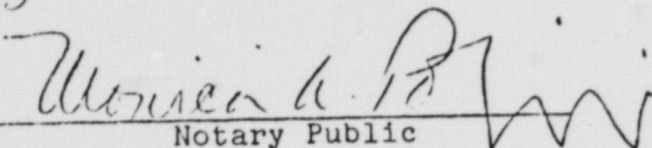
Dated: New York, New York  
May 13, 1975

  
\_\_\_\_\_  
THOMAS J. MULLANEY



AFFIDAVIT OF T.J. MULLANEY IN  
OPPOSITION TO MOTION TO DISMISS

Sworn to before me this  
13<sup>th</sup> day of May, 1975.

  
\_\_\_\_\_  
Notary Public

MONICA A. POLIZZI  
Notary Public, State of New York  
No. 20-450548  
Qualified in Nassau County  
Filed in New York Co.  
on Expires March 30

EXHIBIT A TO AFFIDAVIT OF T. J. MULLANEY

SUPREME COURT : NEW YORK COUNTY  
SPECIAL TERM : PART I

----- x  
MERRILL LYNCH, PIERCE, FENNER & SMITH :  
INCORPORATED, :  
Petitioner, :  
: Index No. 00467/75  
-against- :  
BACHE & CO. INCORPORATED, :  
Respondent. :

----- x  
ADMITOS COMPANIA NAVIERA, S.A., :  
Petitioner, :  
-against- :  
MERRILL LYNCH, PIERCE, FENNER & SMITH : Index No. 00468/75  
INCORPORATED: BACHE & CO. INCORPORATED, :  
and SHERIFF OF THE CITY OF NEW YORK, :  
Respondents. :

----- x  
KORN, J.:

Applications numbered 96, 97 and 98 on the motion  
calendar of March 3, 1975 are consolidated for disposition.

In a special proceeding brought under CPLR 6214(d)  
petitioner Merrill Lynch, Pierce, Fenner & Smith, Inc. seeks  
to compel the garnishee, Bache & Co., Inc., to deliver to  
the Sheriff the assets contained in a certain account  
(No. 56-95239) held in the name of Admitos Compania Naviera,  
S.A. (Admitos). Said account was in accordance with an



EXHIBIT A TO AFFIDAVIT OF T. J. MULLANEY

order of attachment dated December 24, 1974, levied upon by the Sheriff on December 26, 1974. Merrill Lynch has also moved herein pursuant to CPLR 408 for leave to obtain disclosure of Bache's records for the purpose of ascertaining facts in support of Merrill Lynch's claim that said assets are actually the property of one Anastasios (Tassos) Alexiou. Alexiou is a Greek national who allegedly ran up an unsecured debit balance of \$1,247,605.18 in a two month period after opening a commodity trading account with Merrill Lynch on October 18, 1974. The attachment herein was for security purposes only, since jurisdiction was obtained over Alexiou under CPLR 302(a)(1).

Conversely, a special proceeding has been instituted by intervenor Admitos under CPLR 6221 for a determination that the assets in its account at Bache are exempt from attachment for the reason that said account belongs only to Admitos. Admitos also seeks to void the Sheriff's levy and vacate the aforesaid order of attachment. The disputed account is purported to have a value of approximately \$500,000.

The issue as to the true ownership of the account is sharply controverted. Merrill Lynch raises several questions of fact bearing on their effort to impugn the corporate status of Admitos as to the account in question maintained in its name at Bache. Allegedly, Alexiou deposited his own personal funds in the Admitos account and



EXHIBIT A TO AFFIDAVIT OF T. J. MULLANEY

referred to said account on two occasions as his own personal account, as attested to by two annexed affidavits of executives of Merrill Lynch. Merrill Lynch also challenges the bona fide nature of the corporate trading account held at Bache by Admitos on the ground that Admitos was incorporated a year ago for the primary purpose of engaging in the ship-building business.

Merrill Lynch has made a sufficient showing that Alexiou may be using Admitos as his alter ego for purposes of trading in the account held at Bache in the name of Admitos to entitle it to disclosure of Bache's records of said account as provided for by CPLR 6220 (Makaroff & Co., Inc. v. Interamerican Trading Corp., 56 N Y 2d 649, 651). Accordingly, the motion brought on by Merrill Lynch pursuant to CPLR 408 is granted, and Bache shall make available at the office of Merrill Lynch's attorneys, for inspection and copying, the records and documents listed in the annexed notice for discovery and inspection dated February 6, 1975, within ten days after service of a copy of this order, with notice of entry, or at such other time and place as counsel may agree.

The ultimate issue as to the ownership of the funds in account No. 56-95239 maintained in the name of Admitos at Bache & Co., Inc. cannot be determined on the papers submitted herein (See Golodetz v. March, 69 N.Y.S. 2d 4).

EXHIBIT A TO AFFIDAVIT OF T. J. MULLANEY

Accordingly, said issue is referred to Hon. Gerald Mazur, to hear and report, together with his recommendations. Final disposition of the proceedings herein shall be held in abeyance pending the filing of the referee's report. Counsel shall serve a copy of this order upon the office of the Referees, Room 308-M within five days after the completion of the disclosure heretofore directed. Pending the determination of these proceedings, Bache shall make no disposition of the account in question.

Dated: May 2, 1975

Filed - May 5-1975  
New York  
Co. Clerk's Office



AFFIDAVIT OF T. J. MULLANEY IN OPPOSITION TO MOTION  
TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,	:	
	:	
Plaintiff,	:	75 Civ. 828 (WK)
	:	
- against -	:	
	:	
ANASTASIOS ALEXIOU, a/k/a TASSOS ALEXIOU,	:	AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS
	:	
Defendant.	:	

----- x

STATE OF NEW YORK     )  
                              : ss.:  
COUNTY OF NEW YORK    )

THOMAS J. MULLANEY, being duly sworn, deposes and says:

1. I am associated with the law firm of Brown, Wood, Fuller, Caldwell & Ivey, the attorneys for the plaintiff in this action, Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch). I make this affidavit in opposition to the defendant's motion to dismiss this action for lack of jurisdiction over his person and in support of Merrill Lynch's motion to refer this dispute to arbitration.

2. I annex hereto as Exhibit A a copy of the original and an English translation of the brief filed by Tassos Alexiou, the defendant herein, in opposition to Merrill Lynch's application for a pre-notification mortgage on



AFFIDAVIT OF T. J. MULLANEY IN OPPOSITION TO MOTION  
TO DISMISS

Alexiou's real property in Greece. This Greek proceeding has previously been described to this Court in the affidavit of Francis X. Flannery dated April 24, 1975.

3. In this brief, Alexiou argued to the Greek Court that it lacked jurisdiction because all issues between the parties would be tried in New York, pursuant to the arbitration clause in the Commodity Account Agreement between the parties:

"In the agreement dated November 7, 1974, contained in the petition under consideration, it is stipulated that any dispute between us, arising out of our transactions, shall be referred to arbitration to be conducted in accordance with the conditions and rules of the New York Stock Exchange, such arbitration to commence within a year as from the date the dispute has arisen and, furthermore, that the agreement in question and its implementation shall be governed by the law of the State of New York. The Court of New York also will try a lawsuit filed by the opponent company against me, as has been stated at the hearing. Therefore, since the origin, the operation, the activities of either party, the truthfulness as to the indebtedness, the party through whose fault the claim has arisen, my experience in exchange transactions, the excess of the rights conferred by myself the opponent company and the abuse thereof, are to be examined at depth under the laws and exclusively by authorized organs nominated by the litigants, so that by the petition under consideration it is clearly sought to inadmissibly engage a Greek Judge on matters taken place elsewhere... That is to say, the task is assigned to this Court to investigate into a case, which under the agreement, has been assigned to a foreign Arbitration Court (which is to deal with the dispute as long as the Court in New York to which the dispute has been referred should declare itself to be incompetent)." Exhibit A, pp. 1-2.

AFFIDAVIT OF T. J. MULLANEY IN OPPOSITION TO MOTION  
TO DISMISS

An additional copy of the Commodity Account Agreement between Merrill Lynch and Alexiou is annexed hereto as Exhibit B for the Court's convenience.

4. The written decision of the Greek Court denying Merrill Lynch's application, with a translation, is annexed hereto as Exhibit C. The greek Court did not entirely accept Alexiou's argument that the proceeding in New York deprived it of jurisdiction to award security measures, but it nevertheless considered it indispensable that the New York Stock Exchange Board of Arbitration render a decision before the Greek Court would lend assistance.

Dated: New York, New York  
May 23, 1975

s/ Thomas J. Mullaney  
\_\_\_\_\_  
THOMAS J. MULLANEY

Sworn to before me this  
23rd day of May, 1975.

s/ Linda J. Sosnowitz  
\_\_\_\_\_  
Notary Public



EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

TRANSLATION

Before the Single-member First Instance Court of Nauplia

B r i e f s

of Anastassios Const. Alexiou, resident of Athens, 34 Dimokritou  
Str.

v e r s u s

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., a corporation having  
its principal place of business in New York, United States of  
America, lawfully represented.

---

Petition No 61/75 is being heard today filed by the opponent,  
on February 19, 1975, which I strongly deny and to which I ex-  
pressly object for being groundless both in law and in substance  
and absolutely unapproved, and I request that same be turned  
down from the outset, for lack of jurisdiction of this Court to  
try the dispute referred to it and to deny to grant the injunction  
measures requested and more particularly:

1. In the agreement dated November 7, 1974, contained in the peti-  
tion under consideration, it is stipulated that any dispute between  
us, arising out of our transactions, shall be referred to arbitra-  
tion to be conducted in accordance with the conditions and rules  
of the New York Exchange, such arbitration to commence within a  
year as from the date the dispute has arisen and, furthermore,  
that the agreement in question and its implementation shall be  
governed by the law of the State of New York. The Court of New  
York also will try a lawsuit filed by the opponent company against  
me, as has been stated at the hearing. Therefore, since the origin,  
the operation, the activities of either party, the truthfulness as  
to the indebtedness, the party through whose fault the claim has



EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

arisen, my experience in exchange transactions, the excess of the rights conferred by myself the opponent company and the abuse thereof, are to be examined at depth under the laws and exclusively by authorized organs nominated by the litigants, so that by the petition under consideration it is clearly sought to inadmissibly engage a Greek Judge on matters taken place elsewhere and otherwise dealt with and who is called upon to declare whether a claim can be considered probable, the existence of which claim the opposing party is based up-on calculations carried out only by itself, without my acceptance, and which it considers to be the result of work carried out by electronic computers claimed to be infallible in the same way as the bills of our Hellenic Telecommunications Organization (!!) are claimed to be infallible. (See letter dated December 11, 1974 of the opponent and translation thereof). That is to say, the task is assigned to this Court to investigate into a case, which under the agreement, has been assigned to a foreign Arbitration Court (which is to deal with the dispute as long as the Court in New York to which the dispute has been referred should declare itself to be incompetent) since it is from now certain that even the Court which has been considered competent will have a "hard time" in "putting things together" in this daedalian dispute on which no light has been thrown by the Court. The Court in question has the right to order seizure of the real property. I can guess the desperate hope of the opponent company to achieve at this stage a favorable "prelude" from the main trial. Our law, while abolishing the various arbitrations, has afforded a broad field of operation of such arbitration courts in Stock and Commodity

./.

EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

Exchanges (Civil Procedure 902) by accepting a settlement of disputes by the expert arbitrators of such Courts. Consequently, the indebtedness claimed by the opponent company must be reviewed in accordance with the provisions of the laws to which the parties have been subjected and this Court is absolutely incompetent to provide even a temporary solution to the present dispute. (What is more, the memorandum submitted by the opponent company to the Court so that the latter might understand the mechanism of the transactions, has rather complicated things even more and it has become obvious from a mere reading of the memorandum that such transactions inevitably result in losses). For this additional reason the petition should be turned down as well. In the event, however, of a further investigation being required into aforesaid petition, the following should be also taken into consideration:

2. The opponent company, having been established through the merger of brokers, has spread its organization throughout the world, employing for its services of brokers, agents and employees, persons coming from all parts of the world and belonging to a variety of religions. It seems, however, that the opponent company does not care for the experience, the organization and the devotion of aforesaid persons to their duties. I have reached this conclusion during the procedure held on this petition which I deny at which two persons of the opponent company have deposed in favor of the petition so as to make it clear that the company's interest has priority over anything else, while those who are in various ways deceived in the exchange transactions carried out through the mediation of the company are the victims of the tricks of the opponent company. Such tricks, which are unknown and inconcei-

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EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

vable to those uninitiated in exchange transactions, are restrained by the domestic law (L.D.2, dated November 10, 1923 "re commodities Exchange") which stipulates that transactions in the Exchanges are permitted not only among the members of each Exchange (article 3, paras, 1,2 and 3) but also between the exchanges and all other domestic commercial firms, as long as the latter are registered in the registers of the respective chamber of commerce. Similarly, foreign firms carry out transactions in the domestic exchanges (article 3, paras. 4 and 5). Thus domestic law permits transactions in commodity Exchanges by organized and financially sound enterprises, conducted in a professional manner, in respect of commodities transactions, the purchase and sale of which they carry out in the Exchange. Nevertheless, the opponent company, before even seeing the person wishing to enter into transactions through it, started purchasing contracts allegedly for his account, for no other purpose except, in principle, to allow its brokers to secure 60 or 70 dollars commission per contract and afterwards to act against the customer by complying with the instructions issued to them by the headoffice of the company. Thus, in the dispute under review, while the opponent company entered into an agreement with me - AN UTTERLY STRANGER TO EXCHANGE USAGES - on November 7, 1974, during the period from October 18, 1974, when it received only a telephone call from me from Athens, and up to November 7, 1974, it purchased 169 contracts for me (!!), whereas the total number of two hundred, as stated by the first witness of the opponent company, is the maximum permissible number of contracts purchased per customer. It should be pointed out that a total of one

./.



EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

thousand two hundred and fifty contracts, approximately,  
have been purchased and sold for my account!!

3. The agreement dated November 7, 1974 produced by the opponent company in its english original and greek translation is a pure "adhesion" agreement or else a "printed terms" agreement. No provision for or stipulation of rights in favor of the customer are included therein. The only particulars mentioned in the form are the age, over 21 years, and a statement to the effect that the appointor-customer shall make up for the deficits of his account. If therefore a customer, whose mother tongue is not the english language, should find out that the form contains a child's play-terms, signs the form, while the opponent company through its agents stands always ready to take the persons who signed for "a serious customer", although the customer, in his childish appearance and brains, simply got hold of a few dollars from his father's wallet to start the game, one can understand the seriousness of the opponent company. This is why I have invoked the domestic law, which calls for positive qualifications of the person entering into exchange transactions, as compared to those of aforesaid agreement, That is to say, while a commercial firm, whether domestic or foreign, would be stigmatized if it should be exposed during the transactions in the domestic exchange, the customer of the opponent company will justifiably attribute his loss both to ignorance of the terms of the transaction and to the fault of the opponent company, which gladly enters into transactions with all adults living on our Planet.

I repeat. that the differences resulting from the agreement and the contracting parties, have been subjected to the law of the State of New York. However. the agreements lawfully concluded under aforesaid law clash with the laws of our country and may

EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

be repudiated by proving that the sole purpose of the adhesion agreement to subject the dispute to the laws of New York has been to violate the Greek law in regard to commodity exchange, which law prohibits and does not permit transactions except between persons specifically mentioned therein and which are deemed to possess knowledge and experience.

4. Under the agreement I have conferred full powers to the opponent company to sell contracts for my account at its discretion, and even if I went bankrupt or died they would have the right to do the same. I am thinking of the misfortune of my heirs from all the things the opponent company would do "for its protection" in the event of my death. If, while still living, they have brought me in a state of disaster, in case of my death they would definitely bury my unfortunate descendants. However, the administration of alien property generates throughout the world the obligation to render an account. The opponent company, acting arbitrarily and at its convenience, displayed inactiveness when the value of my contracts went up, because if they sold the contracts as they had the right to do so, I would have made profits and the opponent company would be grieved to see me abandoning the cycle of transactions. There was no need to ask me whether I wished my contracts to be sold, since I had from the outset conferred upon them full powers and indeed their questions could possibly mislead me or, at least, create a dilemma to me. As far as I know the brokers do their best for their customers. It is only the opponent company that does the best for itself. This is what its Manager stated in London. The other witness, being present at the deposition of the former, heard what had been testified and tried to dissipate the impres-



EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

sion created by adding that the customer's interest comes first (what a lie!!). But the impression to the contrary still remains unfading.

The second witness urged me at the time when my account was profitable to sell contracts of remote maturity - October 1975 and not the short-term ones- March, May, July 1975 -, because the former contracts would result in a loss. These things took place in accordance with the telex produced by the opponent company whereby I was supposed to be informed of the impending drop in prices so as to restrain myself and not sell all my contracts. Thus the opponent company gained a commission of \$ 120,000, while I personally, following the advice of my ..... guardian, was ruined.

5. The opponent company acknowledges in its petition that in December (2,3 and 3) I gave instructions to it to sell all my contracts; and although the opponent could easily sell the same on the 5th and 6th December 1974, it left said days to pass inactive, trying or acting maliciously to make me sustain a loss, while the opponent company although my instructions given to it referred to the sale, purchased many contracts for me, as emerges from the account produced by it and invoked by myself.

This has been a mortal blow for me. On December 5 and 6, 1974 some 10,000 contracts were handled and the opponent company employing, among others, brokers and employees in large numbers and having a large number of customers ought and could have sold my contracts. On the contrary, they purchased contracts at a time when there was no demand for contracts on the market. Undoubtedly, the indifference, inexperience, absurdity and negligence of the agents of the opponent company are obvious and have proved to be the



EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

only cause for the loss I have sustained.

On December 16, 1974, I strongly protested to the manner under which the transactions were conducted by the opponent company and of which I was being informed for the first time. This emerges from my telex - in its original and greek translation- which I produce and invoke. On December 19, 1974, I received a reply by telex also, signed by the second witness of the opponent company, to the effect that my account with them was balanced. I am producing and invoking said telex and its translation. Nevertheless, the opponent company's case against me continued always to my detriment, proving the imprudence of the opponent. The allegation that additional deposit has been asked of me, even if this is true, proves that the opponent's intention has not been to secure itself from the proceeds of the sale, but to abstain from selling the contracts and to utilize my additional deposit for other transactions.

Now, the fame of the opponent company has undergone a trial. Court action has been taken against it for effecting investments in shares of a company which has gone bankrupt, by convincing its customers that the price of the shares will go up (see produced text and translation). I am stating the foregoing so as to prove that the opponent company is responsible for the loss mentioned in the application.

6. In any case, there is no question of risk arising out of a postponement or a case of urgency to grant a prenotification of mortgage. I am the owner of a tract of land near the sea at Costa-Fina, Portoheili, Ermionis, measuring 250 stremmas ap-

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EXHIBIT A TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK BRIEF)

proximately, on which there is a landing strip for airplanes, a control tower, abundant buildings, a level ground, etc. This landing strip is used by airplanes providing service to tourists and other airplanes for the public security. Other areas not of the same value were about to be expropriated in order to construct a second landing strip. Their unit price in 1973 was fixed at Drs. 500-600 persquare meter (see decision No 266/1974 of the Court of Appeal of Nauplia, produced and invoked). Thus the value of my tract of land in question is approximately five times the sum claimed by the opponent company and there is no risk of being sold nor has anything to that effect been deposéd. Therefore, the petition should be turned down from this point of view as well.

Whereas, I again deny the petition, the briefs, oppositions, documents and allegations of the opponent company, as well as everything to which I do not expressly agree,

T h e r e f o r e

and with the reservation of all and any of my rights towards the opponent company,

I r e q u e s t

that my present briefs be upheld; that the applications, briefs and allegations of the opponent company be turned down; and that the opponent company be ordered to pay all legal expenses.

Nauplia, March 19, 1975

The Authorized Attorneys

TRUE AND CORRECT TRANSLATION

LAW OFFICES OF  
ZEPOS & ZEPOS  
7 HIPPOCRATES ST.  
ATHENS 143, - GREECE

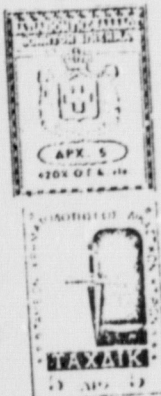




EXHIBIT B TO  
AFFIDAVIT OF T.J. MULLANEY

CODE 91R 6-67

COMMODITY ACCOUNT AGREEMENT

Mer. Lynch, Pierce, Fennér & Smith Incorporated

In consideration of your acting as broker for the undersigned, I hereby consent and agree that

Any and all transactions shall be subject to the constitution, rules, regulations, customs and usages of the exchange or market or its clearing house, if any, where executed.

Any and all commodities, contracts relating thereto, now or hereafter held or carried by you for me, (either individually or jointly with others) are to be held by you as security for the payment of any liability of mine to you.

You shall have the right, where, in your discretion you consider it necessary for your protection, or in the event that a petition in bankruptcy, or for the appointment of a receiver, is filed by or against me, or an attachment is levied against my account(s) with you, or in the event of my death, to sell any or all commodities in my account(s) (either individually or jointly with others) to buy any or all commodities which may be short in such account(s) and to close any or all outstanding contracts, all without demand for margin or additional margin, notice of sale or purchase, or other notice or advertisement, and any such sales or purchases may be made at your discretion on any exchange or other market where such business is then usually transacted, and on any such sale you may be the purchaser for your own account, it being understood that a prior demand, or call, or prior notice of the time and place of such sale or purchase shall not be considered a waiver of your right to sell or to buy without demand or notice as herein provided; and it being further understood that I shall at all times be liable for the payment of any debit balance owing in my account(s) with you upon demand, and that I shall be liable for any deficiency remaining in any such account(s) in the event of the liquidation thereof in whole or in part by you or by me.

I represent that I am more than twenty-one years of age.

All communications, whether by mail, telegraph, telephone, messenger, or otherwise, sent to me at my address as given to you from time to time shall constitute personal delivery to me.

It is agreed that any controversy between us arising out of your business or this agreement, shall be submitted to arbitration conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange, except however if the controversy involves any Security or Commodity transaction or contract relating thereto executed on an exchange located outside of the United States then such controversy, at the election of either of us, shall be submitted to arbitration conducted under the constitution and rules of such exchange (and if neither of us so elects, arbitration shall be conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange). Arbitration must be commenced within one year after the cause of action accrued by service upon the other of a written demand for arbitration or a written notice of intention to arbitrate, naming therein the arbitration tribunal.

(OVER)



EXHIBIT B TO  
AFFIDAVIT OF T.J. MULLANEY

This agreement and its enforcement shall be governed by the laws of the State of New York.  
This agreement shall also inure to the benefit of your successors, by merger, consolidation or otherwise, and assigns, and you may transfer my account to any such successors or assigns.  
This agreement shall continue until signed notice of revocation is received by or from me, and in case of such revocation it shall continue effective as to transactions entered into prior thereto.

Date 18 OCT 1974 (Signature) X Tassos Alexiou X

COMMODITY ACCOUNT AGREEMENT

NOV 14 3 42 PM '74

TASSOS ALEXIOU 110-21085

UNREGULATED  
REGULATED

NAME

ACCOUNT NO.

000 00 0000 7428  
MR TASSOS ALEXIOU  
34 DEMOKRITOU STREET  
ATHENS TT 136  
GREECE

110 21035

(OVER)

EXHIBIT C TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK DECISION)

Translation

No. 113

The Single-member First Instance Court of Nauplia  
Composed of Judge Achilles Gatsopoulos, President of the  
Judges of First Instance, and Secretary Sofia Kassapaki.

Having held a public meeting in its courtroom on March 19,  
1975 in order to try the following case between:

The Petitioner company, MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INC, a corporation existing and operating under the laws  
of the State of Delaware, with registered offices in New York,  
U.S.A., lawfully represented, attending through its authorized  
attorneys An. Vathis and Sp. Zepos, attorney-at-law in and for  
Athens, and

The defendant, Anastassios Const. Alexiou, resident of  
Athens, attending through his authorized attorneys Pan.Mitromaras,  
Vass. Thylizas and G. Kallimopoulos, attorney-at-law in and for  
Athens.

On the petition whereby approval is requested for the regi-  
stration of a prenotification of mortgage, filed under Ser.No.  
61/1975.

Having heard the litigants  
Having seen the file. Having deliberated in accordance with the Law.

Whereas, from the provisions of Article 3 of the Code of  
Civil Procedure, in conjunction with those of article 126 of the  
Introductory Law of the Civil Code (said article having been taken  
from the Draft of the Code of Civil Procedure), it clearly emerges  
that the international jurisdiction of the Greek Courts is esta-  
blished (or exists) also in cases where foreigners are suing or

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EXHIBIT C TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK DECISION)

sued in the case of a civil dispute between litigants, pertaining to the sphere of a civil, family and commercial law and the domestic courts are properly engaged with the task of settling the difference, provided there is a general or special venue (articles 22, 29 of the Code of Civil Procedure) because in the contrary (i.e. if no such venue exists as to the competency of the Greek Courts) no Greek court can settle the dispute (Supreme Court 358/66). Nevertheless, in view of the provisions of the Code of Civil Procedure in regard to safety measures (article 682 of the Code of Civil Procedure) whereby the legal order aims at providing judicial protection to cases of urgency and of the fact that the refusal of the competent organs to provide such protection for a trial of a dispute would have been contrary to the generally acceptable fundamental principles (Frangistas, Principles of Private Law, pp. 95, Note 13, Apostolopoulos, President of First Instance Judges, para. 615), the Greek Courts are permitted to try a dispute between foreigners or between a foreigner and a greek in case of need to take safety measures in order to prevent annihilation of the right (of the petitioner in case of delay even if the main case has no relation whatsoever with the Greek State, nor are there the conditions of article 3 of the Code of Civil Procedure and of articles 22, 23 of the same Code (Plionis, International Jurisdiction of Greek Courts under the Code of Civil Procedure 1971, para. 87, page 202-203; Beys, Procedure of the Single-Member First Instance Court, Edition 1969, page 257 and NoB 1969, page 64). Thus an international jurisdiction of the Greek Courts is established (article 727, para. 3 of the Code of Civil Procedure) in respect of safety measures.

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EXHIBIT C TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK DECISION)

All the foregoing are applicable on condition that the Courts are not called upon to apply the provisions of a foreign law which exceed the limits specified by public order (article 33 of the Civil Code).

Whereas, in the petition under review, as same has been supplemented by the petitioner-foreign company, it is stated that said company has entered into an agreement with the defendant, a Greek subject, in London for the conduct of exchange transactions in New York, i.e. the purchase and sale of commodities at the risk and for the account of the defendant, and that in implementation of relevant instructions of the defendant the company has purchased contracts, but following settlement of the account there has resulted a debit balance of the defendant amounting to Drs. 37,000,000 approximately, which the petitioner company has lost. To that effect the petitioner company requests that safety measures be taken granted to it in order to safeguard its above mentioned claim and that permission be granted to register a prenotification of mortgage on the defendant's property. Thus the petition is lawful, based on aforesaid provisions and on the provisions of articles 1278, 1277, 1274 of the Civil Code, is properly brought before this Court, and should therefore be examined in substance.

Whereas, the defendant invokes the relevant clause (arbitration) of the initial agreement signed between him and the petitioner company and maintains that erroneously this Court deals with the dispute, however his objection is unacceptable since it emerges from the provisions of articles 685 and 689 of the Code of Civil Procedure that the civil Courts are compe-

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EXHIBIT C TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK DECISION)

tent (although there is an arbitration clause) to order that safety measures be granted (First Instance Court of Athens 3068/71, Single-member First Instance Court of Thessaloniki 100/70, Armenopoulos 24,1046). This is permitted also by the provisions-applicable in this instance - of the Court of New York in regard to exchange transactions.

Whereas, from the documents invoked and produced in lawful translation, from the depositions of the witnesses examined in Court, from the allegations of the litigants there emerge the following: At his visit to London in October 1974 the defendant assigned to representatives of the petitioner company to carry out exchange transactions for his account, namely the sale (of sugar and copper) of commodities to third parties, having signed a relevant agreement to that effect (see translation of the agreement dated November 7, 1974). Subsequently, a supplementary agreement was signed between the parties, containing a clause for arbitration before the New York Exchange and on the basis of the regulations of aforesaid Exchange, including also an additional term whereby the differences arising out of the agreement were to be settled in accordance with the law of New York. More specifically, it emerges from the contents of the agreement signed between the parties on November 7, 1974 (said agreement is produced in translation as per article 43 of the Code), that the transactions (of exchange nature) are subject to the provisions of the Regulations of the New York Exchange and to the usages and customs of the exchange in which such transactions are being carried out and in particular the transaction usages of the Exchanges of New York or London. Under the same agreement, instructions were given to the petitioner company to sell and purchase aforesaid commodities and to liquidate the relevant contracts.



EXHIBIT C TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK DECISION)

In implementation of aforesaid agreement the petitioner company, through its lawful representatives and brokers in the Exchanges of New York and London, carried out various purchases and sales of commodities i.e. it purchased contracts (of sugar, etc), aiming at a future increase in the price of sugar, that is, it sought to achieve a profit for the benefit of its appointor. At first a profit was made out of the handling of these contracts on account of the increase of sugar prices. Subsequently, the applicant company sold - as it asserts - the contracts in its hands and from such liquidation there has resulted a debit balance of its appointor. It has not been possible to ascertain the number of contracts sold in the exchanges (sale of exchange chattels) and the size of the deficit created for the defendant on account of a drop in the price of sugar (it should be noted that the defendant strongly denies the accuracy of the sales effected and of the allegations of the petitioner company) and in view also of the manner (by electronic computer) of calculating such result. In this instance the need arises to find out the number and the size of the sales and transfers made and to settle the differences arising therefrom which, as stated above, are settled mainly on the basis of the usages and transaction principles of the Exchange of New York and also of the provisions of the Law of New York "re exchange commodities". The cycle of the transactions and the result accruing therefrom can be easily found by the Board of Directors of the New York Exchange which is aware of the usages prevailing in the exchange transactions and can look into the records of the New York Exchange. Thereafter the Court can proceed to settle the dispute. Although the competency of the Court is not affected by the arbitration clause referred to above, yet it is advisable to have the mediation of the Board

EXHIBIT C TO AFFIDAVIT OF T. J.  
MULLANEY (GREEK DECISION)

of Directors of the New York Exchange which, taking into consideration the conditions under which the transactions have been conducted and the usages prevailing, will determine the size of the loss or profit. This is indispensable in order to ascertain whether the usages of the New York Exchange - which have the force of law - are acknowledged by us, because they might be contrary to basic moral principles or to fundamental social and economic conceptions which govern the Greek legal order, (order publique) in which case such provisions are not applicable in Greece, because they clash with public order (article 33 of the Civil Code; Yan-nacopoulos G. Principles articles 33, page 64. Athens Court of Appeal 1950/1971; N. KB, 828 and Krispis Nikolett. NoB.18, 645), notably with the general rules of vital interests of the country for the sake of higher moral principles (Maridakis, International Law, volume A, page 216). In the light of the foregoing the petition under review must be turned down.

T h e r e f o r e

Judging after hearing both litigants.

The Court turns down the application under review,

Adjudged and decided and published in Nauplia on April  
12, 1975.

Ach. Gatsopoulos  
Judge

Sofia Kassapaki  
Secretary



TRUE AND CORRECT TRANSLATION

LAW OFFICES OF  
ZEPOS & ZEPOS  
7 HIPPOCRATES ST.  
ATHENS 143, - GREECE



MEMORANDUM AND ORDER APPEALED FROM

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

MERRILL LYNCH, PIERCE, FENNER & :  
SMITH INCORPORATED, :

Plaintiff, :

-against- :

ANASTASIOS ALEXIOU, a/k/a :  
TASSOS ALEXIOU, :

Defendant. :

----- x

MEMORANDUM AND ORDER

75 Civ. 828

# 42791

A P P E A R A N C E S :

BROWN, WOOD, FULLER, CALDWELL & IVEY  
Attorneys for Plaintiff  
One Liberty Plaza  
New York, New York 10006  
By: THOMAS J. MULLANEY, ESQ.,  
Of Counsel

LUNNEY & CROCCO  
Attorneys for Defendant  
20 Exchange Place  
New York, New York 10005  
By: MICHAEL J. McALLISTER, ESQ.,  
Of Counsel

MEMORANDUM AND ORDER APPEALED FROM

KNAPP, D.J.

Defendant - a resident of Greece - has moved to dismiss the complaint in this action by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") to recover the debit balance in defendant's commodities account with Merrill Lynch on the ground that the Court lacks personal jurisdiction over him. Merrill Lynch has cross-moved to stay the action and compel arbitration of the dispute before the New York Stock Exchange, pursuant to the last paragraph of the parties' Commodity Account Agreement and Sections 3 and 4 of the Federal Arbitration Act, 9 U.S.C. §§ 3 and 4. Because of our disposition of defendant's motion to dismiss, we need not reach the merits of plaintiff's cross-motion.

The issue raised by defendant's motion to dismiss is whether, under New York's "long arm" statute - CPLR § 302(a)(1) - defendant can be said to have, by virtue of his having placed numerous buy and sell orders for certain commodities futures contracts through Merrill Lynch's London and New York offices, "transacted business" within the state of New York. Unlike most cases arising under the "transaction of business" provision of § 302 wherein a third party plaintiff seeks to establish personal jurisdiction over a foreign defendant by virtue of the activities



MEMORANDUM AND ORDER APPEALED FROM

in New York of the defendant's agent, the instant case involves a situation where the agent itself is suing a foreign principal, seeking to attribute its own unilateral activities within New York - albeit at the direction of the foreign principal - to the defendant for jurisdictional purposes.

The complaint - originally filed in New York Supreme Court and later removed to this Court by reason of diversity of citizenship - alleges that defendant opened a commodities futures trading account in October, 1974 with plaintiff's London affiliate. Thereafter, as a result of trading in said account, a debit balance of \$1.2 million was incurred, which plaintiff Merrill Lynch now seeks to recover. Since defendant admittedly was never physically present in New York in connection with the transactions which gave rise to this lawsuit, the only possible jurisdictional nexus between defendant and New York are the activities engaged in by plaintiff - his agent<sup>1/</sup> - at his specific request. More specifically, it is plaintiff's contention that defendant can be deemed to have "transacted business" within New York by virtue of his having instructed plaintiff - and plaintiff having carried out those instructions to buy and sell New York Sugar 11 Contracts, which transactions can be conducted nowhere in the world except on the New York Coffee and Sugar Exchange.

MEMORANDUM AND ORDER APPEALED FROM

Ordinarily, New York courts have been extremely reluctant to permit an agent to bootstrap himself into jurisdiction over a non-domiciliary principal by means of the agent's own unilateral activities in New York. Haar v. Armendaris Corp. (1st Dept., 1972) 40 A.D.2d 769; rev'd, 31 N.Y.2d 1040; Parke-Bernet Galleries, Inc. v. Franklyn (1970) 26 N.Y.2d 13, 19 (n.2) (1973), Traub v. Robertson-American Corp. (Sup. Ct., Nassau Co., 1975) May 30, 1975 N.Y.L.J. p. 21, Hertz, Newmark & Warner v. Fischman (Civ. Ct., New York City, 1967) 53 M.2d 418. This is because due process requires that the non-domiciliary defendant himself have had some meaningful contact with the forum state. It is essential that, before personal jurisdiction may be obtained in such circumstances, the defendant "purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws". Hanson v. Denckla (1958) 357 U.S. 235, 253. New York has been extremely reluctant to find such "purposeful" availment where the defendant is claimed to have acted within the state only through the agency of the plaintiff suing him.

For example, in Haar v. Armendaris Corp., supra, a New York attorney sought to recover his compensation for having negotiated a business deal in New York from the



MEMORANDUM AND ORDER APPEALED FROM

Delaware corporation which had specifically retained him for that very purpose. The Appellate Division sustained jurisdiction over the Delaware defendant on the ground that it had transacted business in New York through the plaintiff-attorney. As that court observed (at 769):

"Clearly, the negotiations were by plaintiff and his associate as the agents for and in behalf of the defendant under the express provisions of the retainer. Defendant, therefore, through plaintiff and his associate as its agents, transacted business within this state within the meaning of CPLR § 302(a)(1)."

The lone dissenting Justice, although recognizing that plaintiff was a true agent, nonetheless felt constrained by footnote 2 in Parke-Bernet Galleries, Inc. v. Franklyn (1970) 26 N.Y.2d 13, 19, 308 N.Y.S.2d 337, 341 to conclude that in an action by an agent against his foreign principal, the acts of the agent can never be attributed to the foreign defendant for jurisdictional purposes. Thus, the dissenting Justice observed (337 N.Y.S.2d at 287-8):

"This is not an action between defendant and a third party, but rather between plaintiff as agent for defendant and defendant-principal. In the former situation I would not hesitate to find jurisdiction, but I conclude differently under the facts of this case. This precise issue was the subject of a footnote in Parke-Bernet Galleries, Inc. v. Franklyn, 26 N.Y.2d 13, at p. 19, 308 N.Y.S.2d 337, at p. 341, 256 N.E.2d 506, at p. 509 which reads as follows:

'2. The present case differs materially from others, relied upon by the defendant, in which we have denied jurisdiction. (See Glassman v. Hyder, 23 N.Y.2d 354, 296 N.Y.S.2d 783, 244 N.E.2d 259; Standard Wine & Liq. Co. v. Bombay Spirits Co., 20 N.Y.2d 13, 281 N.Y.S.

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2d 229, 228 N.E.2d 367; McKee Elec. Co. v. Rauland-Borg Corp. 20 N.Y.2d 377, 283 N.Y.S.2d 34, 229 N.E.2d 604, supra; Kramer v. Vogl, 17 N.Y.2d 27, 267 N.Y.S. 2d 900, 215 N.E.2d 159.) It is sufficient to point out that in each of those cases, all of which involved agents who were suing their principals, the plaintiff was relying on his own activities within the State, and not those of the defendant, as the basis for jurisdiction. In other words, in no one of these cases had the defendant himself engaged in purposeful activity within the State nor had the cause of action arisen out of transactions with third parties conducted through an agent.'"

The Court of Appeals unanimously reversed the finding of jurisdiction "on the dissenting opinion of the Appellate Division". 31 N.Y.2d 1040.

It seems to us that Haar is dispositive of this motion. This can be illustrated by comparison of the facts in Haar and those at bar on the one hand, with those, on the other hand, in Parke-Bernet, the case which the Haar court found controlling.

Here, and in Haar, defendant engaged plaintiff to act as his agent to perform work which could only be done in New York (here, trading in a certain contract which exists only in New York and in Haar, negotiating a contract with a corporation situated in New York). Those factors were also present in Parke-Bernet. However, defendant in Parke-Bernet



MEMORANDUM AND ORDER APPEALED FROM

had directed plaintiff to establish an open telephone line to be available exclusively to him during the entire course of a certain auction, and had prevailed upon plaintiff to assign to him a specific employee (one Nash) to do his bidding exclusively during the course of the auction. By the use of this telephone line and employee, defendant substantially affected the outcome of the auction as to the two paintings he eventually purchased. Citing both the activity in influencing the course of the auction and the "borrowed servant" status of Nash, the Court of Appeals found that defendant had "transacted business" within the state.

By contrast, there is no claim here that plaintiff set up any particular telephone line for defendant's exclusive use. On the contrary, all plaintiff is claimed to have done was allow defendant to use one of its regular telephones for as long as it took to consummate the sale of the contracts in question.<sup>2/</sup> Nor is there any claim that such sale had any significant effect on the day's activity on the Exchange floor. Finally, it is not claimed that any of the employees of plaintiff necessary to consummate the sale were exclusively assigned to defendant for any specified period of time. As a result, we are constrained to find that defendant did not "transact business" within the state, within the meaning of CPLR § 302(a)(1), as authoritatively interpreted by the New York Court of Appeals.

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This result is subject to the criticism leveled against the Haar doctrine by Dean McLaughlin in his Practice Commentary, McKinneys CPLR § 302 (1974-75 Pocket Part, pp. 13-14). See also Note. New York's Long-Arm Jurisdiction: The Case for the Agent-Plaintiff 41 Brooklyn L.Rev. 625 (1975). It also seems inconsistent with the result which would be reached in the District of Columbia. Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc. (May 23, 1975) (43 U.S.L.W. 2507). However, we are bound by the law of New York, and Haar is the authoritative expression of that law. See Mullaney v. Wilbur (June 9, 1975) \_\_\_\_\_ U.S. \_\_\_\_\_ (Slip Opin., at 7).

Defendant's motion to dismiss for lack of personal jurisdiction is, accordingly, granted and the complaint dismissed without prejudice.<sup>3/</sup>

Dated: New York, New York

July 8, 1975

\_\_\_\_\_  
WHITMAN KNAPP, U.S.D.J.

Judgment Entered

7-16-75

/s/ Raymond F. Burghardt  
Clerk



MEMORANDUM AND ORDER APPEALED FROM

FOOTNOTES

1/

By its own affidavits submitted in opposition to defendant's motion, plaintiff characterizes itself as having acted in the capacity of defendant's agent.

2/

Although defendant apparently initiated numerous transactions in his account with plaintiff, plaintiff has chosen to focus on one particular sale of New York Sugar 11 contracts as a basis of jurisdiction, in which defendant utilized a telephone located in the office of plaintiff's London office to place his sell order.

3/

Long after this motion was sub judice, plaintiff submitted a supplemental memorandum of law which raised - for the first time - the argument that an agreement to arbitrate in the State of New York is a consent by the parties to personal jurisdiction in New York. See, e.g., Matter of Liberty Country Wear [Riordan Fabrics Co.] (Sup. Ct., N.Y. Cy., 1950) 197 Misc. 581, 96 N.Y.S. 2d 134. Because of the untimeliness of the memorandum, we need not consider the points raised therein. However, because of the possibility that such points might be meritorious, the defendant's motion to dismiss is granted without prejudice to plaintiff's rights, if any, to seek appropriate relief under the CPLR.

NOTICE OF MOTION TO ALTER  
OR AMEND JUDGMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INCORPORATED,

Plaintiff,

-against-

ANASTASIOS ALEXIOU, a/k/a  
TASSOS ALEXIOU,

Defendant.

Index No.  
75 Civ. 828 (WK)

NOTICE OF MOTION TO  
ALTER OR AMEND JUDGMENT

-----X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Thomas J. Mullaney and the exhibits annexed thereto, and upon a memorandum of law submitted herewith, the undersigned will move this Court before the Honorable Whitman Knapp, in Room 619, United States Courthouse, Foley Square, New York, New York, on the 7th day of August, 1975 at 9:00 a.m. or as soon thereafter as counsel can be heard for an order pursuant to Rule 59(e) of the Federal Rules of Civil Procedure altering or amending the judgment entered in this action on July 16, 1975 and finding that the defendant in this action has consented to the jurisdiction of this Court over his person and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
July 23, 1975

Yours, etc.,

BROWN, WOOD, FULLER, CALDWELL & IVEY

By 

(A Member of the Firm)

Attorneys for Plaintiff

One Liberty Plaza

New York, New York 10006



NOTICE OF MOTION TO ALTER  
OR AMEND JUDGMENT

TO:

MICHAEL J. McALLISTER, ESQ.  
LUNNEY & CROCCO  
Attorneys for Defendant  
20 Exchange Place  
New York, New York 10005

AFFIDAVIT IN SUPPORT OF MOTION  
TO ALTER OR AMEND JUDGMENT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

MERRILL LYNCH, PIERCE, FENNER & :  
SMITH, INCORPORATED, :

Plaintiff, :

Index No.  
75 Civ. 828 (WK)

-against-

ANASTASIOS ALEXIOU, a/k/a :  
TASSOS ALEXIOU, :

Defendant. :

AFFIDAVIT IN SUPPORT OF  
PLAINTIFF'S MOTION TO  
ALTER OR AMEND JUDGMENT

-----X

STATE OF NEW YORK     )  
                          :     ss.:  
COUNTY OF NEW YORK    )

THOMAS J. MULLANEY, being duly sworn, deposes and says:

1. I am associated with the firm of Brown, Wood, Fuller, Caldwell & Ivey, attorneys for Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), the plaintiff in this action. I make this affidavit in support of plaintiff's motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure to alter or amend the judgment entered in this action on July 16, 1975 dismissing the complaint without prejudice for lack of personal jurisdiction over the defendant.

2. The Court may have overlooked the fact that the defendant had argued successfully to a Court in Greece, his own homeland, that the Greek Court should decline to accept jurisdiction over an application by Merrill Lynch on the grounds that the entire dispute would be decided in New York in accordance with the arbitration agreement between the parties. Copies of the English translations of Alexiou's



AFFIDAVIT IN SUPPORT OF MOTION  
TO ALTER OR AMEND JUDGMENT

brief and of the opinion of the Greek Court are annexed hereto as Exhibits A and B, respectively. The actual text of Alexiou's brief to the Greek Court is as follows:

"In the agreement dated November 7, 1974 contained in the petition under consideration, it is stipulated that any dispute between us, arising out of our transactions, shall be referred to arbitration to be conducted in accordance with the conditions and rules of the New York Stock Exchange, such arbitration to commence within a year as from the date the dispute has arisen and, furthermore, that the agreement in question and its implementation shall be governed by the law of the State of New York. The Court of New York also will try a lawsuit filed by the opponent company against me, as has been stated at the hearing. Therefore, since the origin, the operation, the activities of either party, the truthfulness as to the indebtedness, the party through whose fault the claim has arisen, my experience in exchange transactions, the excess of the rights conferred by myself the opponent company and the abuse thereof, are to be examined at depth under the laws and exclusively by authorized organs nominated by the litigants, so that by the petition under consideration it is clearly sought to inadmissibly engage a Greek Judge on matters taken place elsewhere... That is to say, the task is assigned to this Court to investigate into a case, which under the agreement, has been assigned to a foreign Arbitration Court (which is to deal with the dispute as long as the Court in New York to which the dispute has been referred should declare itself to be incompetent) [Sic.: refer the matter to arbitration.]" Exhibit A, pp. 1-2.  
(emphasis added, translated from Greek)

3. The Greek Court accepted Alexiou's assurances that the entire matter would be litigated in New York before the arbitrators of the New York Stock Exchange. It further decided that, although it had jurisdiction, it would abstain from exercising that jurisdiction, since the New York Stock Exchange was the more appropriate forum to decide this

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dispute. The arbitrators' decision could then be enforced in Greece, provided that it complied with Greek concepts of public order:

"In this instance the need arises to find out the number and the size of the sales and transfers made and to settle the differences arising therefrom which, as stated above, are settled mainly on the basis of the usages and transaction principles of the Exchange of New York and also of the provisions of the Law of New York 're exchange commodities'. The cycle of the transactions and the result accruing therefrom can be easily found by the Board of Directors of the New York Exchange which is aware of the usages prevailing in the exchange transactions and can look into the records of the New York Exchange. Thereafter the Court can proceed to settle the dispute. Although the competency of the Court is not affected by the arbitration clause referred to above, yet it is advisable to have the mediation of the Board of Directors of the New York Exchange which, taking into consideration the conditions under which the transactions have been conducted and the usages prevailing, will determine the size of the loss or profit. This is indispensable in order to ascertain whether the usages of the New York Exchange - which have the force of law - are acknowledged by us." Exhibit B, pp. 5-6 (emphasis added, translated from Greek).

4. By making this argument to the Court of his own country, Alexiou has taken advantage of the jurisdiction of this Court, has thereby consented to the jurisdiction of this Court, and has in fact opted for New York as the forum wherein this dispute should be litigated.

5. This motion for reconsideration is based on the legal proposition that the defendant has consented to the jurisdiction of this Court. This is a completely separate ground of decision from the question whether the defendant has transacted any business within this State, pursuant to CPLR §302, which this Court decided in its Opinion and



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Judgment entered on July 16, 1975.

6. The matter of the Greek Court proceeding was brought to this Court's attention in the affidavit of Francis X. Flannery, sworn to on April 24, 1975. In that affidavit the plaintiff informed this Court of the Greek proceeding and its result, and promised to file the Greek Court's opinion as soon as it was received from Greece. The subject of the Greek proceeding was also discussed at the oral argument on April 25, 1975. At that time, the undersigned repeated the promise to file the Greek Court's papers as soon as they were received.

7. The opinion of the Greek Court and the brief which Tassos Alexiou filed, together with their translations into English, were served and filed on May 27, 1975, as soon as possible after their arrival in New York. Along with the brief and opinion was filed a supplemental memorandum of law on the proposition that Alexiou had waived his right to object to this Court's jurisdiction because of his argument to the Greek Court concerning the arbitration agreement and also because of his signing of the arbitration agreement itself. It was this memorandum which the Court referred to in footnote 3 of its opinion as being filed long after the motion was sub judice.

8. The defendant's attorneys answered these papers in a letter to the Court, dated May 30, 1975, which letter conceded that this Court "gave plaintiff permission to

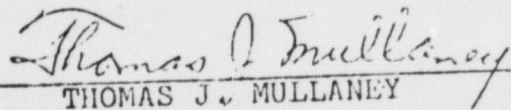
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submit the decision of the Greek Court and the papers filed therein." (Letter of Michael J. McAllister to Hon. Whitman H. Knapp, dated May 30, 1975, last paragraph.)

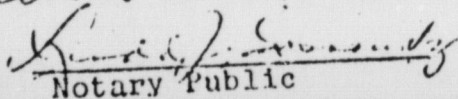
9. It is respectfully submitted that this Court should consider the Greek brief and opinion in deciding this motion, because their existence was brought to this Court's attention before the first oral argument, was discussed at that oral argument, and the papers themselves were filed as soon as possible after the oral argument and before the Court's decision on the defendant's motion to dismiss.

10. In summation, it is submitted that Mr. Alexiou has successfully persuaded a Greek Court that it should decline jurisdiction on the grounds that this action is going forward and will be decided in New York in accordance with the written arbitration agreement between the parties. The Greek Court has therefore decided to abstain and await the decision from New York. To permit Alexiou to avoid litigation in New York would reward this duplicity and leave both parties, Greek and American, without a forum in either Greece or America in which to litigate their entire dispute.

WHEREFORE, plaintiff respectfully submits that its motion to alter or amend the judgment of this Court should be granted and that this Court should find that the defendant has consented to personal jurisdiction in New York because of the arguments made by him to the Greek Court.

  
THOMAS J. MULLANEY

Sworn to before me this  
23rd day of July, 1975

  
Notary Public

LINDA J. SOSNOWITZ  
Notary Public, State of New York  
No. 31 6521956  
Qualified in New York County  
Commission Expires March 30, 1976



ENDORSED DECISION ON MOTION  
TO ALTER OR AMEND JUDGMENT

Although the issue raised by this motion to  
amend the Judgment was not mentioned in the  
Court's opinion entered on July 16, 1975,  
it was carefully considered and found to be  
untenable.

US District Court  
filed  
Jul. 30, 1975  
SD of N.Y.

Motion denied.

So ordered

s/W. Knapp  
U.S.D.J.

July 24, 1975

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INCORPORATED,

Plaintiff,

-against-

ANASTASIOS ALEXIOU, a/k/a  
TASSOS ALEXIOU,

Defendant.

Index No.  
75 Civ. 828 (WK)

NOTICE OF APPEAL

-----X  
Notice is hereby given that Merrill Lynch, Pierce,  
Fenner & Smith Incorporated, the plaintiff above named,  
hereby appeals to the United States Court of Appeals for the  
Second Circuit from the judgment dismissing the complaint in  
this action without prejudice for lack of personal jurisdic-  
tion over the defendant, which was entered in this action on  
the 16th day of July, 1975, and from each and every part of  
said judgment.

Dated: New York, New York  
July 29, 1975

BROWN, WOOD, FULLER, CALDWELL & IVEY

By

*James B. May*  
(A Member of the Firm)

Attorneys for Plaintiff  
One Liberty Plaza  
New York, New York 10005

TO:

*Lunny & Crocco*

~~LUNNY & CROCCO~~

Attorneys for Defendant  
20 Exchange Place

New York, New York 10005 110a.



COPY RECEIVED

*Two copies*

SEP 17 1975

LUNNEY & CROCCO

ATTORNEYS FOR

*Aggeler*